

March 12, 1986

## CONGRESSIONAL RECORD — HOUSE

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ing out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(g) REINSURANCE CONTRACTS.—Section 249(a) of the National Housing Act is amended by striking out "March 17, 1986" in the second sentence and inserting in lieu thereof "April 30, 1986".

(h) LIMITATION ON INSURANCE COMMITMENTS.—Section 531 of the National Housing Act is amended to read as follows:

"LIMITATION ON COMMITMENTS TO INSURE  
LOANS AND MORTGAGES

"Sec. 531. The authority of the Secretary to enter into commitments to insure loans and mortgages under this Act shall be effective for fiscal year 1986 only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year."

(i) ARMED SERVICES HOUSING INSURANCE.—

(1) CIVILIAN EMPLOYEES OF ARMED FORCES.—Section 809(f) of the National Housing Act is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(2) DEFENSE HOUSING FOR IMPACTED AREAS.—Section 810(k) of the National Housing Act is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(j) LAND DEVELOPMENT INSURANCE.—Section 1002(a) of the National Housing Act is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(k) GROUP PRACTICE FACILITIES INSURANCE.—Section 1101(a) of the National Housing Act is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

SEC. 2. EXTENSION OF REHABILITATION LOAN AUTHORITY.

Section 312(h) of the Housing Act of 1964 is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

SEC. 3. EXTENSION OF RURAL HOUSING AUTHORITIES.

(a) RENTAL HOUSING LOAN AUTHORITY.—Section 515(b)(4) of the Housing Act of 1949 is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(b) RURAL AREA CLASSIFICATION.—Section 520 of the Housing Act of 1949 is amended by striking out "March 17, 1986" in the last sentence and inserting in lieu thereof "April 30, 1986".

(c) MUTUAL AND SELF-HELP HOUSING GRANT AND LOAN AUTHORITY.—Section 523(f) of the Housing Act of 1949 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

SEC. 4. EXTENSION OF FLOOD AND CRIME INSURANCE PROGRAMS.

(a) FLOOD INSURANCE.—

(1) GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

(2) EMERGENCY IMPLEMENTATION.—Section 1336(a) of the National Flood Insurance Act of 1968 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

(3) ESTABLISHMENT OF FLOOD-RISK ZONES.—Section 1360(a)(2) of the National Flood Insurance Act of 1968 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

(b) CRIME INSURANCE.—Section 1201(b)(1) of the National Housing Act is amended by striking out "March 17, 1986" in the matter preceding subparagraph (A) and inserting in lieu thereof "April 30, 1986".

SEC. 5. MISCELLANEOUS EXTENSIONS.

(a) COMMUNITY DEVELOPMENT BLOCK GRANT CLASSIFICATIONS.—

(1) METROPOLITAN CITY.—Section 102(a)(4) of the Housing and Community Development Act of 1974 is amended by striking out "March 17, 1986" in the second sentence and inserting in lieu thereof "April 30, 1986".

(2) URBAN COUNTY.—Section 102(a)(6) of the Housing and Community Development Act of 1974 is amended by striking out "March 17, 1986" in the second sentence and inserting in lieu thereof "April 30, 1986".

(b) SECTION 202 INTEREST RATE LIMITATION.—Section 223(a)(2) of the Housing and Urban-Rural Recovery Act of 1983 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

(c) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 312 of the Home Mortgage Disclosure Act of 1975 is amended by striking out "March 17, 1986" and inserting in lieu thereof "April 30, 1986".

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

THREE NEW RESCISSION PROPOSALS, SIX NEW DEFERRALS OF BUDGET AUTHORITY, AND FIVE REVISED DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 99-180)

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of today, Wednesday, March 12, 1986.)

EMPLOYEE POLYGRAPH PROTECTION ACT OF 1985

The SPEAKER pro tempore. Pursuant to House Resolution 337 and rule XXIII, The Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1524.

□ 1545

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, with Mr. GONZALEZ in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 30 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, I rise in support of H.R. 1524, the Employee Polygraph Protection Act, which passed out of my subcommittee and the Education and Labor Committee.

The use of polygraphs has multiplied in the private workplace, and 80 percent of its use has been for the screening of job applicants. Yet, in testimony before my subcommittee by victims of the polygraph, by reformed former polygraphers, by researchers, and by civil liberties and labor groups, we have seen how the polygraph machine is an unreliable tool for detecting truth and dishonesty.

The polygraph machine is basically a machine which measures body temperature, blood pressure, and blood pulse levels to detect stress during questioning by polygraphers. We all know that stress can result from any number of stimuli, including being investigated or accused falsely of wrongdoing.

In addition, the polygrapher plays judge, jury, and God in determining a worker's fate for all future jobs. No one reviews or second guesses a polygrapher's findings, and polygraphers often boast of never having failed to get their "man or woman." Merely regulating polygraphers by licensing or requiring bachelor of arts degrees only elevates a voodoo craft into a science.

This bill will prohibit the use of polygraphers in the workforce, with exceptions given to the Government sector and in case of national security and the drug industry for people who have access to dangerous drugs. Government bodies will continue to be able to use the polygraph machines for police investigations.

This bill is important, because it protects worker's rights to privacy, to due process, and to the presumption of innocence until some degree of evidence proves them guilty of alleged wrong acts. It is important to emphasize that all courts of law prohibit the use of polygraphs in court as evidence unless stipulated by the parties. In addition, the American Psychological Association opposes the use of polygraphs as a scientifically reliable lie detector instrument.

Employers would be better off if sound auditing and personnel screening practices would be employed which would truly determine the fitness of an individual for employment or continued employment.

Mr. JEFFORDS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, polygraphs have become a big business. An estimated 2 million polygraph examinations are

administered each year. Millions of employees have been, and continue to be, judged on the basis of these examinations. Thousands of employers use them for one purpose or another. Yet neither they nor we know for certain how accurate these tests really are. That uncertainty alone was enough to convince me not to cosponsor the bill before us. I did so because I wanted to take a good, hard look at this legislation and the issues it addresses.

The validity of polygraphs was the subject of a 1983 study by the Office of Technology Assessment which found estimates of accuracy ranging from 64 to 98 percent. Overall, OTA found that when used in criminal investigations, polygraphs work better than chance, but have error rates that could be considered significant.

Unfortunately, most studies ascribing high rates of accuracy to polygraphs have been conducted by polygraphers themselves. Asking them to gauge their own validity is a little like asking me to analyze the correctness of my voting record. In both cases, the answer is near perfect. Studies by people who do not make their living from polygraphs have found a substantially lower rate of accuracy.

Some businesses, of course, have testified that polygraphs are essential to combating theft in the workplace. They maintain that polygraphs are useful in both preemployment screening and in the investigation of a particular incident. Other businesses, however, argue that polygraphs are not useful; that they are not accurate and even counterproductive. These employers have found that if you don't put some trust in your employees, they may do their best to merit your mistrust.

With business divided and science unsure, what should our approach be? Mixed reviews are nothing new to polygraphs, dating back to at least the beginning of this century. Although Congress has confronted the issue only in the past two decades, the courts have been facing it for a good deal longer.

In the leading case on the admissibility of polygraphs, *Frye v. U.S.*, (CA DC; 293 F. 1013, 12/3/23), a unanimous U.S. Court of Appeals for the District of Columbia rejected the defendant's attempt to introduce the results of a lie detector test. As the court noted, the theory underlying the lie detector "seems to be that the truth is spontaneous, and comes without conscious effort, while the utterance of falsehood requires a conscious effort, which is reflected in blood pressure." In ruling against the admissibility of the lie detector, the court wrote that:

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of a principle must be recognized, and while the courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduc-

tion is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in admitting expert testimony deduced from the discovery, development and experiments thus far made.

That decision was rendered over 60 years ago. Does it still hold true? Have polygraphs crossed the line to scientific acceptance?

To be accurate, the instrument discussed in the *Frye* case apparently only measured blood pressure, whereas today's polygraph also measures breathing and sweating. Despite the addition of these indicia, however, psychological authorities have not improved their opinion of the polygraph.

In fact, a month and a half ago, the American Psychological Association adopted a resolution stating that the evidence of polygraphs' validity remains unsatisfactory, and is particularly poor for employment screening and in dealing with victims of crime. The resolution also warned against the potential for great damage to the innocent people who will be labeled as liars by the polygraph.

Some courts have permitted the introduction of polygraph results, typically with a written agreement by both parties in advance of the examination. However, most courts continue to adhere to the approach in the *Frye* decision, rejecting the introduction of polygraphs as evidence. Even the Justice Department, which objects to this legislation, opposes the use of polygraph results in criminal trials.

But if the use of polygraphs is generally prohibited by our courts, does it follow that employers should be bound by the same rules? Not necessarily. A personnel office is obviously not a court of law.

However, I do not think that an employee has to leave his or her rights outside the personnel office door, either. Leaving aside the issues of accuracy and admissibility for the moment, what is the personal impact of the polygraph exam?

I don't think there is any question but that polygraphs are intimidating and humiliating. And if they do not actually violate an individual's rights to speech, privacy, and freedom from self-incrimination, they sure come close. The fundamental principles of the Constitution's first, fourth, and fifth amendments are not advanced by the polygraph—in fact, quite the opposite. Yet 2 million people every year are asked to take these tests.

I think all of us have been preaching the virtues of cooperation between labor and management. I know I have, telling business and unions alike that we cannot afford to waste our time, energy, and resources on disputes, and that we must work more as a team, where risks and rewards are shared. Do polygraphs have any place in this drive for labor-management coopera-

tion? The question answers itself. Of course they do not. A workplace run on fear will run fearfully.

But let's bring the issue a little closer to home. Suppose during your reelection campaign this October, your opponent asks you to take a polygraph. You know that it might be 90 percent accurate, or it might be right only 60 percent of the time. Would you take it? Or would you protest that you had done nothing wrong? If you would take it, then by all means oppose this bill. If you wouldn't risk your career on a 10- to 40-percent chance of error, then don't ask 2 million other Americans to take that same risk.

I urge you to join me in opposing the Young-Darden substitute and voting for H.R. 1524.

□ 1555

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from Montana [Mr. WILLIAMS].

(Mr. WILLIAMS asked and was given permission to revise and extend his remarks.)

Mr. WILLIAMS. I thank the gentleman for yielding this time to me.

My colleagues, this is not a bill to ban the use of lie detectors in America. The purpose of this bill is to limit the epidemic growth of lie detector, polygraph, testing in the workplace. The American Polygraph Association estimates that last year more than 2 million lie detector tests were given. By the way, that number of tests has tripled—tripled—in just the past 10 years.

When Americans hear that last year we gave 2 million lie detector tests, they automatically assume that those tests are being given by the FBI or the CIA or your local police, but the fact is that 98 percent of those 2 million tests were given by private business, and approximately three-quarters of these tests are given for preemployment testing, while the other one-fourth are used for investigations of possible wrongdoing of workers.

This legislation is moderate. It does not place a total ban on the use of lie detectors. It does halt the epidemic growth in them. The bill protects workers who are wrongfully denied employment and whose careers are devastated based on the results of these questionable tests. In fact, tens of thousands of workers are wrongfully denied employment every year, because of the demonstrated and inherent inaccuracies of both these lie detector gadgets and the people who operate them.

Through the years, States have made sporadic efforts to control the use of this gadget. Today, 31 States and the District of Columbia have passed legislation affecting their use in the private work force. However, these separate laws have not proven effective. In fact, they have, ironically, given a false sense of security that the

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gadget works, and thus, once a State regulates the gadget, the use of the gadget explodes.

Often employers undermine State law by pressuring employees and job seekers into "volunteering" to take a test even when the State law prohibits requiring or requesting an examination. In States that completely ban the use of lie detectors, employers may avoid the law by hiring in a neighboring State which permits examination and then transferring the employee into the State where such testing is prohibited. It is clear now that State regulation has been perceived as a "seal of approval" on the gadget, thus resulting in the explosive, epidemic rise to 20 million lie detector tests on American citizens each year.

Our criminal justice system presumes that an individual is innocent until proven guilty. The polygraph abuses that principle because it requires one to prove one's innocence. The courts in this country refuse to admit, in most instances, polygraph results as evidence in trials because of the documented inaccuracies of these gadgets and because they, in effect, require testifying against oneself.

Is it not sadly ironic, my colleagues, that criminals are protected from having to take the lie detector examination, but America's workers are not?

This bill is moderate. It does not ban polygraphs. It fully respects the previous decisions of this Congress to allow careful, limited, and specific use of lie detectors by the Federal Government in matters pertaining to our national security and public health.

Likewise, this bill provides cautious exemptions for those private businesses that directly impact on our national security or public health. We will be accepting amendments to provide other exemptions regarding dangerous drugs, security guards, and the protection of electric and nuclear powerplants and public transportation.

We will accept those amendments because they are a matter of protecting the national health and safety.

A bipartisan group of 168 Members of the House have joined me in cosponsoring this legislation. A companion bill to H.R. 1524 has been introduced in the Senate, S. 1815, by Chairman ORRIN HATCH and ranking member Senator EDWARD KENNEDY.

Mr. JEFFORDS. Mr. Chairman, I yield 5 minutes to the gentleman from Connecticut [Mr. McKINNEY].

(Mr. McKINNEY asked and was given permission to revise and extend his remarks.)

Mr. McKINNEY. I thank the gentleman for yielding this time to me.

Mr. Chairman, quite some time ago a former colleague in this body left to become the mayor of the city of New York, and he handed me a bill, several of them in fact. One of them was a bill prohibiting the use of the polygraph in private employment screening and testing, and for private employees.

Since that time, the bill has led a many-checkered life in this body and is now in front of us, and I hope it passes.

We are talking about a basic point of civil rights when it comes to the polygraph. What amazes me is the fact that we are talking about it at a time when there is more and more doubt cast upon the very efficacy of this method of telling whether or not, in fact, someone is lying.

We have private employers throughout the country using the test in a way that it was never meant to be used, to find out the sexual proclivity, the marital status, the financial problems of individuals, for which they have no right to ask questions or to invade a human being's privacy.

In this day and age this bill does not just simply become a matter of the lie detector and its ill use. It really becomes a matter of, sooner or later, we have to stop through electronic methods violating the civil rights and the privacy of the American citizens.

Almost every day that one picks up the newspaper, there is another way found to invade that human privacy; there is another requirement set up. And although I certainly am not going to argue the condition of drug tests or anything else, I am going to state that it has been proven that the lie detector is not an accurate test.

We have the U.S. Department of Justice, of all places, in 1976 testifying versus the reliability of polygraph tests and recommending not using polygraph evidence in criminal trials. The President's Privacy Protection Study Commission, established in 1974 under a Republican administration, concluded that the use of polygraphs is an unreasonable invasion of privacy that should be proscribed. The Congressional Office of Technology Assessment, in a 1983 study of the scientific validity of polygraph testing, concluded there is no scientific evidence to establish the validity of polygraph testing for screening a large number of people.

In other words, Mr. Chairman, what we are doing today is simply protecting the American people within the privacy of their lives from the interference of their employers. There is nothing within this bill that affects Federal employees. I wish it did. There is nothing in this bill that affects State employees. I wish it did. There is nothing in this bill that will exempt certain people from its protection if, in fact, they work for the defense industry or are contracted with by the Defense Department.

The bill is a basic, minimum statement of private and individual privacy and civil rights and deserves to pass. It was interesting, Mr. Chairman, and it may be interesting for the audience to realize that on a television show a "lie detector test" being given to someone who had never had one before, who was not asking for a single thing, who had nothing to hide, and the questions

were innocuous, that by tightening certain muscles of the human body they could send the machine into paroxysms of misreadings.

This is the machine we are talking about, and to put people in fear of its application, in fear of their livelihood and job, in fear of their future relations with other people because of this test, is to me a total, complete and absolute violation of everything this country stands for.

I urge my colleagues to support the bill as passed out by the committee. It is the minimum standard we can get through to eliminate once and for all the private, unspecific, uncontrolled use of what I consider a machine that is itself, the big liar.

□ 1605

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Missouri [Mr. GEPHARDT].

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Chairman, I rise today in support of H.R. 1524, a measure which, in my opinion, is an important step to ensure that tens of thousands of workers are no longer wrongfully denied employment.

Over the last 10 years, the number of polygraph tests given in the workplace has tripled to the point that now more than 2 million tests are given each year. Approximately three-quarters of these tests are given for preemployment purposes, while the other one-quarter is used for the investigation of workers.

Unfortunately, the lie detector is an unreliable instrument. In fact the courts refuse to admit the results of lie detector tests as evidence because of the documented inaccuracies of these gadgets. As Pat Williams pointed out, "It is sadly ironic that criminals are protected from polygraphs while American workers are not!"

The bill doesn't totally ban the use of lie detectors, but it does stem the tide of their increasing use. The bill protects workers who are wrongfully denied employment by providing a heightened threshold of worker protection which States may exceed but may not fall below.

These inaccurate instruments simply shouldn't be allowed to regulate the workplace. The Office of Technology Assessment in 1983 indicated there was some evidence for polygraph validity in criminal investigations, but little evidence of validity in screening situations, whether they be preemployment, preclearance, periodic or aperiodic, random or dragnet. In fact, the agency said, error rates in preemployment polygraph screening could be as high as 50 percent.

This is a bill whose time has come—it deserves our support.

Mr. JEFFORDS. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

(Mr. GUNDERSON asked and was given permission to revise and extend his remarks.)

Mr. GUNDERSON. Mr. Chairman, as the ranking minority member on the Employment Opportunities Subcommittee which has jurisdiction over this legislation. I have had the opportunity to attend all of the hearings, to study the issue, and to try to arrive at some conclusions. I am here to suggest to you today that my conclusion is perhaps one of frustration with all of those options which have been presented before us.

I think if there is one tragedy in the whole labor management area of the 99th Congress, it is that we have resorted to the extremes, one extreme or the other, whether it be plant closing legislation or whether it be polygraph legislation, or I suspect some other similar bills which may come down before this Congress in the future. We have apparently decided to abandon any efforts to achieve a reasonable consensus or reasonable middle ground.

I would like to suggest that there are three different concepts that ought to be considered when looking at this legislation, and those would be the issues of consistency, accuracy and discrimination.

First and foremost is the issue of consistency. The legislation before us today, whether it be the bill from my friend and distinguished colleague on the committee, the gentleman from Montana [Mr. WILLIAMS], or whether it be the substitute that would be offered, I think both lack in the area of consistency. I have to tell you I have real problems. I have real problems going home to western Wisconsin and saying to the people in my home town of Osseo that the city clerk in that small community of 1,500 people and other city employees can all be required to take a lie detector test, but no one in the private business sector in town can use a similar means to deal with potential crime. I have real problems with consistency that says it is OK to use a polygraph, it is reliable enough to use a polygraph for national security, but it is not a reliable enough tool to use in the Ben Franklin Store. That seems to me to be very inconsistent, lacking some kind of consistent public policy.

The second question is one of accuracy, because despite my concerns over consistency, I have similar problems with the accuracy of the polygraph as an instrument. It is clear in study after study that the polygraph is not a reliable tool.

Let me quote for you just a second from the committee report where it says:

For more than 20 years the Congress has been interested in the validity of these tests and every study done since 1983 for the U.S. Congress has found that there is no scientific basis for polygraphs as lie detectors.

The third issue that I bring to this Congress is the whole issue of discrim-

ination, because I think we ought to be concerned about discrimination against potential employees. That is exactly what happens when you use the polygraph in the screening process when it is an unreliable tool. But I think also we must recognize when we are looking at discrimination that if our effort is one of eliminating discrimination in employee screening, that we then also ought to be in front of this Congress today and in the well of the House dealing with such issues as the usual interviews, as written tests and as references, because I would suggest to you that all of those three preemployment screening tools discriminate in other ways, sometimes just as much against a potential employee as does the polygraph.

Certainly tools such as the polygraph have a need in this country. They are needed simply because when you look at the realities of business and industry in this country in the high risk industries, they need to have every possible opportunity to try to deal with the potentials for theft and fraud and abuse which occur.

Second, we must recognize that there is something like \$10 billion a year in employee theft that occurs in the United States retailing industry alone. That is something that is a legitimate concern of America's private sector.

Third, in the area of drugs and controlled substances, there are approximately 10,000 drug-related thefts a year reported to the Drug Enforcement Agency; 15 percent of those which come from employee theft.

On the other hand, I think we need to recognize that while there may be a role and a need, for the polygraph, there certainly are some major problems with the use of the polygraph. The validity of the polygraph is absolutely questioned I think by almost everyone. The little research which has been done on its accuracy is inconclusive, but that which is there would suggest that clearly it is not a reliable instrument.

We have problems with poorly trained examiners. We have major problems with irrelevant questions that are being asked. Further, outside factors such as stress, physical movement, the type of individual tested, length and depth of the test, and training and prejudices of the examiner, to name a few, can substantially affect the exam's results, particularly in preemployment screening.

Mr. Chairman, what then is the proper role of the Federal Government in providing a consistent policy which is fair to the business but at the same time protects current and prospective workers from inaccuracies and subsequent discrimination from faulty polygraph exams? I do feel that the Federal Government must do something to regulate and restrict the use of such questionable tools; however, I am concerned that an across-the-board ban of polygraph testing in the private sector work place as provided for in H.R. 1524 would result in an unfair disadvantage for many pri-

private employers. On the other hand, the regulatory approach as proposed by Representatives YOUNG and DARDEN in H.R. 3916 would not provide sufficient protection.

For this reason, I prepared a substitute to H.R. 1524 that would uphold the provisions of the bill which prohibit polygraph testing for preemployment screening, and which would prohibit periodic testing of current employees for no identifiable cause. But, my substitute would allow private employers to use the polygraph as an investigative tool in the event of substantial employee theft, embezzlement, misappropriation of funds, or industrial espionage.

This substitute would also allow employers to make use of the polygraph for investigative purposes in the event that a crime has occurred which threatens public safety or results in substantial property damage. Retaining the language in H.R. 1524 that would allow for testing upon the theft or diversion of controlled substances, my alternative measure would also allow for preemployment screening for those employees who would have access to such controlled substances in their future employment. Finally, the amendment would exempt government agencies, public utilities facilities, and security services companies from the restrictions of the act—except for certain basic employee protection provisions that apply throughout.

There would however, be restrictions placed upon polygraph testing as allowed by this substitute. No. 1, the use of the polygraph for investigative purposes would only be allowed if such testing is consistent with applicable State and local law and with any negotiated collective bargaining agreement, that explicitly or implicitly limits or prohibits the use of such lie detector exams. Second, polygraph tests would only be allowed to be administered to employees who have had access to the stolen property or to facilities, items, individuals against which the crime occurred, or who are under reasonable suspicion. Last, the crime in question would have to be reported to an appropriate law enforcement agency before such polygraph testing would be allowed.

Other provisions of my substitute include certain protections for employees requested to take polygraph examinations as provided for under the act, such as restrictions on questions to be asked, a provision that examinees be provided copies of test results upon request, and that future employment decisions now be based solely on the results of the polygraph exam. Penalties under this substitute would be the same as those provided for under H.R. 1524 for violators of the act, although, the substitute if enacted would not preempt any State law which provides more restrictive protections on polygraph testing.

Unfortunately, in discussing this approach with my colleagues, I did not find that my substitute would meet with adequate support during today's consideration of the polygraph protection legislation to justify pursuit of its passage. Therefore, I have decided against offering it here today, although I continue to feel this alternative to be preferable.

Studies prove that the polygraph is much more accurate when used as an investigative tool as opposed to an employment screening mechanism. While this alternative would not have totally banned the use of the polygraph

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in the private sector—it would have restricted its use to that of an investigative tool—to be used only when cause is shown.

Many proponents of preemployment and less restrictive testing of current employees may have argued that this approach would be like "locking the barn door after the horse has already gotten out," but I disagree. While such testing would occur only after a theft or other crime had occurred—the fact that it would be an allowable tool—would have served to discourage employees from initially indulging in crimes.

In closing, let me just remind everyone that the majority of employees are very honest, upstanding individuals. I would still have concerns over the use of the polygraph even under the restricted circumstances provided for under my proposed substitute due to the test's questionable accuracy. However, this approach would have provided businesses with some form of protection against high losses due to employee crime—another tool that if used properly could have aided in prevention of such activities, while still restricting its use.

I continue to maintain that other forms of investigations and employee screening are much preferable to the use of the polygraph exam, this alternative would have just provided what I feel to be a more reasonable position for the Federal Government to take in protection against unfair polygraph examinations in the workplace than is found under H.R. 1524 or H.R. 3916.

Mr. MARTINEZ. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Thank you, Mr. Chairman, for the time and the opportunity to speak out on this issue. I want to start out by commending the sponsor, the gentleman from Montana, Mr. PAT WILLIAMS, on his legislation and the intent and the content of that legislation. Mr. Chairman, I commend you also for bringing these issues to the floor and fighting so hard to maintain rights.

Mr. Chairman, this is not a conservative issue, this is not a liberal issue. This is not an employment issue, this is not a crime issue. This is a rights issue.

If an individual in America was accused of murder, of killing four people, and perhaps maybe even was seen with a gun smoking in his hands, he could hide behind his rights and refuse to take a polygraph, and either way that polygraph could not be used against him. Imagine the American people that have a 20-year-old daughter that is out to be hired for a job. She is not accused of committing any crime, but she has to go in and as one of the employment screening devices she is going to be subjected to a polygraph test.

My God, it is a wonder why we even need this type of legislation to protect rights when this administration is attempting to turn back the clock. I honest to God believe that this is not necessary to vote on. This is a commonsense issue and a rights issue.

□ 1615

For all of those people out there that are saying we must protect America's national security, be advised the bill exempts all Government employers; Federal, State and local. Second of all, it exempts any private contractor doing business related to intelligence or counterintelligence with either the CIA, the National Security Agency, or the FBI.

In addition, this bill allows the use of lie detector tests by private contractors dealing with Defense Department counterintelligence functions.

Finally, the bill also allows employers to administer a polygraph to any employee with direct access to controlled substances when those substances have been reported stolen to the Drug Enforcement Administration.

Let me say one other thing: The measure requires the Labor Department to prepare, print and distribute notices to employers on the protections that this act provides.

This act, this bill, makes the rights of the average American in the workplace more secure. It does not turn back the clock. So when you hear all of this debate, the American people could recognize the fact that this is not conservative versus liberal; this is not Democrat versus Republican; this is not an employment process; this is not a crime process. This is a rights issue, and that is what separates us from the rest of the planet. Any other person in any other government; they do not enjoy those rights and we cannot let precedent turn back that clock.

So I am asking every Member here to support Mr. WILLIAMS' bill, to have an overwhelming vote for rights in this country; and finally to oppose the measure and the substitute being brought by Darden-Young.

Mr. JEFFORDS. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana [Mr. LIVINGSTON].

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Chairman, after serving more than 6 years as a prosecutor in Louisiana I have extensive experience using the polygraph exam. It proved to be a valuable investigative tool in my work as deputy chief of the criminal division in the U.S. attorney's office, as chief special prosecutor for the local district attorney's office, and as chief prosecutor for the organized crime unit of the Louisiana attorney general's office.

I voted with 332 of my colleagues in favor of legislation introduced by BILL Young of Florida to expand the use of polygraph testing by Federal intelligence agencies so that they can better protect our national security. I believe that it would be a terrible mistake for the House to approve the use of the polygraph for the Government while prohibiting it for the private sector.

We've passed hundreds of bills requiring business to protect the health and welfare of their customers, and we hold them liable in court if they don't. But, if we pass H.R. 1524, what we are really doing is stripping many businesses of an important tool they need to protect the public.

For example, up to a million doses of legal drugs vanish from drug company inventories each year. These drugs have the potential to kill or cripple their users. By denying these companies the use of the polygraph you kill a valuable tool they need to protect their inventories from thieves. Child care centers, nuclear facilities, and banks are just a few examples of the hundreds of other businesses that entrust their customer's health, welfare, and resources to their employees. These businesses need the polygraph to help them hire honest, competent people and to help find out when thefts and abuses occur.

When a certain retailer in my district stopped using his polygraph screening process thefts went up so dramatically that he was forced to reinstitute it immediately. We all know that the cost of employee and customer theft in the retail business is ultimately passed on to the consumer, so a vote for this bill is a vote for higher retail prices.

The polygraph's accuracy has been shown in study after study to be between 85 to 95 percent. This is why we want our intelligence gathering agencies to use it. In Louisiana there were numerous instances in which we used the polygraph to help us in our criminal investigations.

In the space of 6 years during which I served in law enforcement, I can truthfully say that I never experienced any doubt in the usefulness of the polygraph. In fact, in several instances charges were actually dropped because of a defendant's performance on a polygraph. So the polygraph not only helps in catching crooks, but often it clears innocent people.

For all of this, just as polygraph results are inadmissible as evidence in court, I do not believe that employers should use the test results as the sole criterion in making a decision about an employee. This is also the opinion of most polygraph examiners and of the American Polygraph Association.

It is in everyone's interest that polygraph results be as accurate as possible. In a number of States, Louisiana among them, laws have been passed which establish guidelines for training and licensing of polygraph examiners, set requirements for the equipment used in the test, and institute protections for the rights of those taking the exam. This is why I am a cosponsor of H.R. 3916, introduced by Mr. YOUNG and Mr. DARDEN, which will be offered as a substitute to H.R. 1524.

Although I really fail to see any purpose in the Federal Government's involvement in this area at all, it would



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be better to pass legislation modeled on current State law requirements than to simply outlaw the use of the polygraph in the private sector. I believe that it is important that businesses continue to have the tools they need to protect the public's interests. The polygraph is one of these tools, and I urge the House to reject H.R. 1524.

Mr. JEFFORDS. Mr. Chairman, I yield myself such time as I may consume to bring to the attention of the body that the administration is opposed to the substitute and to the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. BROOKS].

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Chairman, I rise in strong support of H.R. 1524—the Employee Protection Act of 1985. This bill will eliminate the widespread and growing use of so-called lie detector tests as a condition of employment in America. It will not block their use by law enforcement agencies for actual investigations. Rather, it is aimed at stopping the growing abuse of polygraph use when private employers force their employees to take such tests as a condition of employment even though they are not even suspected of any wrongdoing. This practice is un-American—it assumes everyone to be guilty until they prove their innocence.

My views on polygraphs have been developed over many years, as a member of the House Government Operations Committee. This committee has overseen the Government's polygraph programs since the early 1960's, and has strongly recommended against the use of polygraphs for screening in the Federal Government in four reports.

Last year, the Office of Technology Assessment surveyed the scientific literature on polygraph validity for the Government Operations Committee. In its report, the OTA concluded that there was no scientifically acceptable study to support the use of polygraphs for screening purposes, and that any validity that the polygraph test may have for specific incident use would likely decrease dramatically in a screening context.

OTA found that coercing persons to take a polygraph test would affect validity negatively. By its nature, screening as a condition of employment is extremely coercive.

Since OTA's study, many proponents of polygraph use have backed away from their claims of high polygraph validity. Instead, they argue the concept of utility. They point to numerous instances when the polygraph exam or the threat of the exam, has been useful in eliciting important information or even confessions.

We should not confuse validity with utility. There is no question that the polygraph can be a very intimidating tool and may have some utility in that regard, just as the dunking stool, the rack, and the firing squad have had in past centuries. As former President Nixon says about polygraphs, "I don't know how accurate they are, but I do know that they'll scare the hell out of people."

This elaborate con operation should not be allowed to be institutionalized as a feature of our Nation's workplace. It is inherently offensive to American concepts of justice.

Last month, the world's largest association of psychologists condemned the widespread use of polygraph tests for screening purposes. The American Psychological Association concluded that conducting such tests by psychologists would be unethical. The group found the scientific evidence regarding the validity of polygraphing to be "unsatisfactory and particularly poor concerning polygraph use in employment screening." They recognized the "great damage to the innocent persons who must inevitably be labeled as deceptors" in such screening situations.

We should not allow passing some bogus lie detector test to become a condition of employment in this country. I urge you to vote for H.R. 1524.

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I want to take this time to commend the gentleman from Montana [Mr. WILLIAMS] and his committee for their outstanding work in bringing this legislation to the floor, backed up as they were by substantial support from the Republicans and from a bipartisan staff that is truly outstanding.

Mr. JEFFORDS. Mr. Chairman, I yield 4 minutes to the gentleman from New York [Mr. KEMP].

Mr. KEMP. I thank the gentleman for yielding.

I thank my colleague from Vermont and commend him and the gentleman from Montana [Mr. WILLIAMS] for their work in bringing this bill, which I consider to be an important piece of legislation, to the floor. There is no doubt that there are many honest and well-meaning employers who see this as a necessary mechanism by which to screen applicants for jobs, and investigate cases of wrongdoing. I do not deny that. I think there are well-meaning men and women on both sides of this issue, but there is a civil rights consideration that has to be made in this debate and it is one that I feel compelled to make.

We need to protect people from polygraphs for obvious reasons. There are serious flaws with regard to their administration, there are problems with the ability to detect veracity, and of the training and competency of the polygraph examiner.

We protect criminals from polygraphs. But yet some working men and women would be subject to some-

thing that is not allowable in a court of law. The crime? They want a job. They could be intimidated, they could get nervous, they could be very subjective with regard to how they respond. They could be put under pressure about what their decisions would be on some matters that have nothing to do with the issue of honesty or crime or drugs, which are legitimate concerns of employers, small business men and women around the country.

I think there has to be protection. I have looked at this issue. I have wrestled with the arguments made by my friends, some of whom are for and some of whom are against, and I must say that all of us want to do the right thing. But I think it is important for the Members of this body to recognize that there are very important issues at stake. One is the civil liberties of the American people and the working men and women of this country.

The participation that they have in a lie detector test seems to me to be too much to ask them as a condition for employment.

Now the bill does recognize the limited need for the use of polygraphs for some investigatory purposes under controlled and reputable circumstances; it provides for an exemption from that ban for Federal, State, and local government, for businesses engaged in Government contracts that relate to national security. But for the vast majority of employers, in my view, passage of this legislation will help protect the rights, the legitimate rights of the workers and those people who are seeking work.

I would urge a vote for this legislation. It is not, nor is any legislation, perfect, but as far as I am concerned, it is an important step in the right direction for both sides of the aisle to join together in this way in order to protect those very serious concerns that we have about how this can be distorted, how it could be abused, and how workers' rights would be denied them under the law.

The CHAIRMAN. The time of the gentleman from New York [Mr. KEMP] has expired.

Mr. MARTINEZ. Mr. Chairman, I yield 30 additional seconds to the gentleman from New York.

Mr. KEMP. I thank the gentleman for yielding this additional time and appreciate it, so that I may finish my point.

It is very clear that polygraphs obtain no more accurate results than if the administrator in some cases just flipped a coin. Now we have to ask ourselves: Is this what we want to develop in our country? Would the conditions for employment require that type of flippancy, if you will, that type of denigration in some cases of the rights of an individual, man or woman, who is seeking employment or legitimately wants to carry out their rights under the free-enterprise system?

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Mr. Chairman, I urge a vote for the Williams-Jeffords legislation and applaud their efforts and look forward to participating in the rest of the debate.

Mr. OWENS. Mr. Chairman, I rise in support of H.R. 1524, the Employee Polygraph Protection Act of 1985. This legislation is desperately needed to protect workers from the indiscriminate use of polygraph testing which is neither valid nor reliable.

Polygraph testing is used in employment screening and "dragnet" searches for the dishonest on the theory that the polygraph is a "lie detector." In point of fact, the polygraph is simply one more stress detector which shares the same problems of reliability and validity as it early forebears. Earlier versions of the polygraph include medieval tests of guilt and innocence such as the requirement that clergymen who were charged with a crime swallow a large piece of bread without water. This mild version of the trial by ordeal was based on the simple observation that when people are frightened—under stress—the mouth would go dry preventing the swallowing of dry bread. Today, by using other measures of stress such as heart rate, breathing, and perspiration, the "trial by ordeal" takes on a scientific gloss without ever having been able to pass scientific muster. In point of fact, when polygraph results have been studied they have been found wanting as was pointed out in the 1985 Office of Technical Assessment study on polygraphs.

Given the lack of validity and reliability, why then are polygraphs so appealing to employers? It would appear, in the fact of security problems, that employers would rather trust a machine rather than their own judgment. Today, more than 30 percent of the Fortune 500 companies and half of the retail businesses use polygraphs instead of, or in addition to, reference checks. The results of polygraph use have not justified its use. Employers who do not use polygraphs have lower rates of theft than those that do. This result would indicate that preemployment reference checks and sound inventory practices may be far more effective in the control of theft.

Polygraphs are also used to gain information which is not related to employment. Frequently questions are asked about political and social beliefs as well as sexual attitudes and practices. Women have been subjected to particularly repugnant questions of a sexual nature. Although redress may be available through legal action for such abuse, that is small comfort to the women who have been put in the humiliating position of having been asked these questions in the first place.

The polygraph's general lack of validity and reliability is enhanced when one is testing a particularly sensitive or intelligent individual. As noted in the OTA report:

Because exceptionally honest and intelligent individuals may be highly reactive to questions about their truthfulness, such desirable employees will be misidentified at higher rates than other less desirable employees.

In short, the polygraph will label as liars those who are most truthful.

The polygraph appears to be an easy way out for the employer who is faced with a security problem. All of those graphs and wires seem to indicate that something scientific is going on. In reality, the polygraph is merely an updated trial by ordeal with all of the faults of

the earlier versions. There is simply no shortcut to determining the truth. Employers are faced, as they have always been, with the tedious task of checking references and making judgments. I urge my colleagues to support H.R. 1524 without weakening amendments.

Mr. DELAY. Mr. Chairman, are we going to be consistent this afternoon, or are we going to create a double standard? Are we going to allow individual businesses to use an investigative tool which we require of the Department of Defense, or are we going to tell those businesses that this tool is off limits for them?

On June 26, 333 of us supported an amendment to the Department of Defense authorization bill where we directed the Pentagon to use random polygraph examinations to screen Pentagon and contractor employees with access to classified information.

In June we voted in favor of requiring this polygraph testing and 9 months later we are considering a vote against it!

What short memories we have!

How can we be so inconsistent?

The issue before us today is simple: Either the polygraph is a valid tool or it is not.

According to the committee report—and I quote—"the committee recognizes that certain employers should be exempted from the provisions of this bill." The bill exempts those involved in matters of national security and those who have direct access to controlled substances.

Now the question we need to ask ourselves this afternoon is this:

"If the polygraph is an evil, unreliable tool, as the advocates of this bill would have us believe, then why should anyone be exempted from H.R. 1524 and be required to take a polygraph?"

The answer, of course, is that it is a positive tool. We recognized its merits with our overwhelming vote in June and the committee tacitly admits them by providing for exemptions.

FBI statistics indicate that internal theft is on the rise. Financial institutions in the United States lost over \$280 million in 1983 and over \$380 million in 1984. This is over nine times the amount lost by robberies.

Your constituents and mine share the burden of internal fraud and embezzlement. Estimates place the increase in consumer prices resulting from internal theft as high as 15 percent.

How can we justify passing this kind of price increase on to the consumers in our districts when there is an investigative tool available which can help avoid it? Clearly it would be bad public policy to eliminate an important instrument in the fight against these losses when the problem is increasingly serious.

This bill places businesses in a catch-22 situation. Employers are held liable for the conduct of their employees and oftentimes required to pay astronomical judgments as a result of litigation. Nevertheless H.R. 1524 denies them the use of a tool which will help to ensure proper conduct.

The issue is best addressed by State regulation—not Federal prohibition. A majority of the States and the District of Columbia now regulate the use of polygraphs in the workplace, helping to assure their responsible use. Licensing procedures and guidelines are appropriate State functions, similar to licensing doctors, real estate brokers, and lawyers. There is no need for the Federal Government

to intervene where the States are already responsive.

Polygraph testing has limitations and should not be the sole criterion for determining guilt or innocence. Yet most law enforcement methods, from fingerprinting to voice identification, are also open to interpretation. The extent and seriousness of the situation demands that polygraph, one effective crime prevention and detection tool, be available to employers.

Recent incidents of child abuse at day care centers only highlight the need for the use of polygraph testing to protect children. I would be very uncomfortable leaving my child at a day care center which was legally prevented from using the polygraph to screen out abusive individuals.

Mr. Chairman, this legislation is fundamentally flawed.

It is inconsistent with prior action by the Members of this House;

It is inconsistent with the tacit admissions of the committee;

It closes its eye to the staggering problem of internal theft;

It needlessly passes costs on to the consumer;

It places employers in a no-win situation; and

It needlessly interferes with State regulations.

Mr. Chairman, this is a bad old bill and I urge my colleagues to vote against it.

Mr. RODINO. Mr. Chairman, I rise in support of H.R. 1524, the Employee Polygraph Protection Act. The bill provides the American worker with important protection against an invidious evil—the polygraph test.

Mr. Chairman, I oppose the widespread use of polygraphs for a simple reason, they don't work. Polygraphs only measure physiological response. It makes no claim to, and does not, measure deception. Study after study has concluded that the polygraph simply is not accurate. When used for preemployment screening, polygraphs are particularly notorious.

Polygraph advocates say that the polygraph has great utility, that it is a useful tool to root out the truth. But Mr. Chairman, the bottom line is that polygraphs cannot ascertain truth, but serve only to coerce employees.

This bill makes certain exceptions for matters relating to drugs and national security. These appear to be limited and reasonable exceptions, based on testimony developed at committee hearings.

Some of our colleagues, Mr. Chairman, favor alternatives to this bill, where polygraphs are limited to certain situations or are licensed for use. The unreliability of the polygraph makes these alternatives unacceptable. Polygraphs just don't work, and should not be used as a device to deny employment opportunities.

Mr. Chairman, I urge our colleagues to support this bill as a necessary measure to rid our Nation of this modern day witchcraft.

Mr. DENNY SMITH. Mr. Chairman, today we are considering legislation which will prevent the use of polygraphs by employers in the private sector. This is a very controversial issue, and it does deserve the attention of this body. But our goal should be insuring that the polygraph is not used indiscriminately by untrained examiners for unwarranted purposes. Under the guise of protecting the rights of individ-

uals, the supporters of this legislation have decided to overlook the rights of corporations to hire the most qualified and dependable persons, and the rights of the general public who must ultimately pick up the costs of employee crime and negligence.

Crime in the workplace is not some fictitious problem that is used as a justification by an employer who wants to violate an individual's constitutional rights. It is a real problem with real consequences for all of us. According to a recent study done of the banking industry, over 80 percent of all losses incurred by banks around the country are a result of employee theft. According to the Federal Bureau of Investigation, these losses amounted to \$282 million in 1983, and \$362 million in 1984. Besides these losses, we have heard stories over the past several months of many officers of financial institutions pleading guilty to involvement in "money laundering" schemes often associated with organized crime and drug trafficking.

Employee theft in the retail industry accounts for millions of dollars worth of losses every year. According to groups such as the American Retail Federation, these thefts account for about 15 percent of the cost of all items sold today. These are costs that are borne directly by the consumer.

The use of illegal drugs has become a major problem in the workplace. Time magazine has made this issue its cover story for this week because of its implications. Drugs play a major role in both white and blue-collar crime. In addition, it has led to loss of lives and property, especially in the transportation industry. I'm sure every one of us have heard the stories of truck drivers who have been involved in accidents while on drugs. Recent fatal railroad accidents in the United States and Canada have been attributed to human error as a result of drugs. Businesses have a right to protect themselves from those people who will not abide by company policy, thus subjecting that company to increased costs and the general public to increased risks.

This legislation would prevent multinational companies such as airlines from conducting preemployment polygraphs. Given the problems we now face with increased espionage cases and terrorism, it seems ridiculous that we would enact legislation which would prevent these companies from taking the necessary steps to protect American interests.

This body was so concerned with the espionage issue that just a few weeks ago we passed legislation which would increase the use of polygraphs by the Department of Defense and defense-related industries. This legislation passed by almost a 5-to-1 margin in the House. At that time, there was no argument about the veracity of the process or the need for it. Polygraphs were an acceptable way to guarantee our national security. What has changed in the past few weeks that makes us differentiate between certain industries and certain sectors of the economy? We are quick to point out the risks and take necessary precautions when our national interests are at stake. Isn't protection from crime a national interest?

I received a call from Bruce Balcom of the McKesson Drug Co. in Wilsonville, OR, yesterday. He expressed his concern about what the loss of polygraph requirements would do in his industry. I'm sure everyone is aware of the many precautions taken by these compa-

nies to protect their products from theft. Mr. Balcom told me how easy it would be to steal pills that have a market value of \$17 and sell them on the street for about \$800 apiece. It is imperative for companies involved in the pharmaceutical industry, such as McKesson and Eli Lilly, to have the opportunity to protect themselves and the community from those who seek employment for the purpose of engaging in illegal drug trade. The use of preemployment polygraphs is vital to this effort.

What we are saying if we pass H.R. 1524 is that company officials do not have the same rights as their employees. An individual has a right to protect himself from an invasion of his privacy, but the company does not have the right to know whether or not the person applying for the job could cause potential harm to the business or the community.

Polygraphs are a useful and necessary tool in the business community. No one is claiming that they are 100 percent accurate, but by the same token, they are no less reliable than individual interviews. Polygraphs cannot, and should not, be the sole justification for the hiring or firing of an employee. But a professionally administered polygraph exam will insure that everyone's rights are protected—employee, employer, and the general public.

Mr. JEFFORDS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment, and each section shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Polygraph Protection Act of 1985."

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. YOUNG of Florida:

Strike out all after the enacting clause and insert in lieu thereof the following:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Polygraph Reform Act of 1985'.*

#### DEFINITIONS

Sec. 2. For the purposes of this Act—

(1) the term 'commerce' has the meaning provided by section 3(b) of the Fair Labor Standards Act (29 U.S.C. 203(b));

(2) the term 'employer' has the same meaning as—

(A) such term is defined in section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)); and

(B) the term 'carrier' is defined in section 1 of the Railway Labor Act (45 U.S.C. 151);

(3) the term 'polygraph examination' means—

(A) any examination involving the use of any polygraph, deception graph, voice stress analyzer, psychological stress evaluator, or any other similar device which is used for the purpose of detecting deception or verifying the truth of statements; and

(B) any interview of any employee or prospective employee that uses any device referred to in subparagraph (A) regardless of terms used in reporting to an employer the findings, opinions, or statements made in or results of such examination;

(4) the term 'polygraph examiner' means any person who conducts a polygraph examination as defined in paragraph (3) of this section; and

(5) the term 'Secretary' means the Secretary of Labor.

#### FINDINGS AND PURPOSE

Sec. 3. (a) The Congress finds that—

(1) the improper use of polygraph examinations in work situations in industries engaged in interstate commerce imposes a substantial burden on interstate commerce through loss of employment and employment opportunities; and

(2) the free flow of goods and services in interstate commerce is burdened by theft, dishonesty, and breaches of trust by dishonest employees and by crimes committed against employees, customers, and the public.

(b) The purposes of this Act are to—

(1) establish minimum standards for the use of polygraphs in employment;

(2) encourage the States and political subdivisions thereof to administer such standards in accordance with the policies of this Act;

(3) provide relief for the improper use of polygraphs; and

(4) provide for Federal oversight of the administration of such standards.

#### PROHIBITION OF POLYGRAPH TESTING NOT IN ACCORDANCE WITH MINIMUM STANDARDS

Sec. 4. No employer may take any action affecting the employment status of an employee or prospective employee, if such action is based on the results of a polygraph examination of such employee or prospective employee that has not been administered in accordance with sections 5 and 6 of this Act.

#### RIGHTS OF POLYGRAPH EXAMINEE

Sec. 5. (a) Each prospective examinee shall sign a notification prior to any polygraph examination which states that—

(1) such examinee is consenting voluntarily to take the examination;

(2) the polygraph examiner may not inquire into—

(A) religious beliefs or affiliations;

(B) beliefs or opinions regarding racial matters;

(C) political beliefs or affiliations;

(D) sexual preferences or activities, unless necessary to determine the qualifications of the employee to be employed (1) by a nursing home, rest home, sanitarium, hospital, day nursery or similar child care facility, or such other institution or service in which the well-being of children, the aged, handicapped, or infirm are entrusted to the care of the employees of such institutions or services, or (2) by an employer providing services in the residence of the employer's customers; or

(E) beliefs, affiliations, or opinions regarding unions or labor organizations;

(3) such examinee may terminate the examination at any time;

(4) such examinee shall be provided with a written copy of any opinions or conclusions rendered as a result of the examination



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upon written request and payment of a reasonable fee by such examinee;

(5) the polygraph examiner is prohibited from asking the examinee any question during the examination that is not in writing and was not reviewed with the examinee prior to the examination;

(6) such examinee has specific legal rights and remedies if the polygraph examination is not conducted in accordance with the provisions of this Act; and

(7) such examinee may receive a copy of the notification upon written request.

(b) Upon written request from an examinee, a polygraph examiner shall provide a signed copy of all opinions or conclusions of a polygraph examination rendered in accordance with section 6 of this Act.

(c) No action may be taken by an employer regarding the employment status of an employee or an applicant for employment that is based solely on opinions or conclusions of a polygraph examiner reached by analysis of a polygraph chart.

(d) Nothing in this section shall be construed to apply with respect to a polygraph examination conducted by, or at the direction of, the United States in accordance with otherwise applicable Federal law.

#### MINIMUM STANDARDS FOR POLYGRAPH EXAMINATIONS

SEC. 6. (a) A polygraph examination may be conducted only by a person who—

(1) is at least twenty-one years of age;  
 (2) is a citizen of the United States;  
 (3) is a person of good moral character;  
 (4) is in compliance with all laws, rules, and regulations of any appropriate State or local government authority governing the use of polygraphs; and

(5)(A) holds a baccalaureate degree from an accredited college or university and has successfully completed a formal training course in the use of polygraphs that has been approved by the Secretary; and

(B) has completed a polygraph examiner internship of at least six months in duration under the direct supervision of a polygraph examiner who has met the requirements of this section.

(b) Notwithstanding the provisions of paragraph (5) of subsection (a), a person shall be permitted to conduct a polygraph examination in accordance with the provisions of this Act, if such person—

(1) has met the requirements of paragraphs (1) through (4) of subsection (a); and  
 (2)(A) on the date of enactment of this Act, holds a valid polygraph examiner license issued by a licensing authority of a State or political subdivision thereof; or

(B)(i) within a period of five years immediately preceding the date of enactment of this Act, has conducted not less than two hundred polygraph examinations; and

(ii) within one year after the date of enactment of this Act, has satisfactorily completed a formal training course in the administration of polygraph examinations approved by the Secretary.

(c) All examiners meeting the requirements of subsections (a) and (b) of this section shall be required every twenty-four months to complete not less than twenty-four hours of continuing education approved by the Secretary regarding the use of polygraphs.

(d) A polygraph examiner may not ask a question during a polygraph examination, unless such question is in writing and has been reviewed with the examinee prior to such examination.

(e) A polygraph examiner may not inquire into—

(1) religious beliefs or affiliations;  
 (2) beliefs or opinions regarding racial matters;

(3) political beliefs or affiliations;

(4) sexual preferences or activities, unless necessary to determine the qualifications of the employee to be employed by (1) a nursing home, rest home, sanitarium, hospital, day nursery or similar child care facility, or such other institution or service in which the wellbeing of children, the aged, handicapped, or infirm are entrusted to the care of the employees of such institutions or services or (2) by an employer providing services in the residence of the employer's customers; and

(5) beliefs, affiliations, or opinions regarding unions or labor organizations.

(f) A polygraph examiner may not perform more than twelve polygraph examinations in any twenty-four hour period.

(g) (1) A polygraph examiner shall—

(A) use an instrument which records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and galvanic skin response patterns as minimum instrumentation standards; and

(B) base an opinion of truthfulness upon changes in physiological activity or reactivity in the cardiovascular, respiratory, and galvanic skin response patterns.

(2) A polygraph examiner may use an instrument which records additional physiological patterns as measured in paragraph (1) and may consider such additional patterns in rendering an opinion.

(h) All conclusions or opinions of the polygraph examiner arising from the polygraph examination shall—

(1) be in writing and based only on polygraph chart analysis;

(2) contain no information other than admissions, information, and interpretation of the chart data relevant to the purpose and stated objectives of the examination; and

(3) contain no recommendation regarding the prospective or continued employment of an examinee.

(i) A polygraph examiner shall maintain all opinions, reports, charts, questions lists, and all other records relating to the polygraph examination for a minimum of two years after administering such examination.

“(j) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law.”

#### CERTIFICATION OF ADMINISTRATIVE PLANS

SEC. 7. (a) Any State or political subdivision thereof which desires to develop and enforce standards for the use of polygraphs by employers and polygraph examiners may submit an administrative plan to the Secretary at such times, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Such plan shall—

(1) identify any agency designated as responsible for administering the plan;

(2) describe the standards in the administrative plan governing polygraph examiners and the use of polygraph examinations;

(3) provide assurances through a written certification that such standards and the enforcement of such standards, shall be at least as effective as the standards set out in this Act; and

(4) explain the manner in which the standards in such plan are administered and enforced by such agency to assure compliance with this Act.

(b) An administrative plan providing adequate assurances and meeting the requirements of subsection (a) shall be deemed approved by the Secretary.

(c) The Secretary shall make a continuing evaluation of each administrative plan which has been approved. If the Secretary

finds that a plan is not being administered in a manner that assures substantial compliance with the standards of this Act, the Secretary shall notify the State or political subdivision thereof of the withdrawal of approval of such plan and, upon receipt of such notice, such plan shall cease to be in effect.

(d) Review of a decision of the Secretary to withdraw approval of an administrative plan under this section may be obtained in the United States court of appeals for the circuit in which the State or political subdivision thereof is located by filing a petition for review with such court within thirty days after receipt of the notice of withdrawal of approval.

#### CERTIFICATION OF POLYGRAPH EXAMINERS

SEC. 8. (a)(1) No person may conduct polygraph examinations, unless such person has certified to the Secretary that he is conducting such examinations in compliance with sections 5 and 6 of this Act and is in compliance with rules and regulations issued by the Secretary pursuant to section 12 of this Act.

(2) The provisions of paragraph (1) shall not apply if such person has met the requirements of an administrative plan adopted pursuant to section 7 of this Act.

(b) The Secretary shall make a continuing evaluation of each certification required by subsection (a) of this section. If the Secretary finds that a person is not in compliance with the provisions of sections 5, 6, and 7 of this Act, the Secretary shall notify the person of the revocation of certification and, upon receipt of such notice, such person may not conduct polygraph examinations.

(c) Review of a decision of the Secretary to revoke a certification under this section may be obtained in the United States district court in the district in which the person resides or has a principal place of business by filing a petition for review with such court within thirty days after receipt of the notice of revocation of certification.

(d) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law.

#### DISCLOSURE OF INFORMATION

SEC. 9. (a) A person other than an examinee may not disclose information obtained during a polygraph examination, except as provided in this section.

(b) A polygraph examiner, polygraph trainee, or employee of a polygraph examiner may disclose information acquired from a polygraph examination only to—

(1) another polygraph examiner in private consultation, the examinee or any other person specifically designated in writing by the examinee; and

(2) the person or governmental agency that requested the examination or others required by due process of law.

(c) An employer for whom a polygraph examination is conducted may disclose information from the examination only to a person described in subsection (b).

(d) Nothing in this section prohibits the disclosure of information obtained during a polygraph examination to a federal law enforcement agency or intelligence agency in accordance with otherwise applicable Federal law or to prohibit subsequent redisclosure by such an agency in accordance with such law.

#### WAIVER OF RIGHTS PROHIBITED

SEC. 10. The rights and procedures provided pursuant to this Act may not be waived

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by contract or otherwise. No polygraph examiner may request an examinee to waive any such right or procedure.

## NOTICE OF PROTECTION

Sec. 11. The Secretary shall prepare and print a notice setting forth information necessary to effectuate the purposes of this Act. Such notice shall be posted at all times in conspicuous places upon the premises of every employer engaged in any business in or affecting interstate commerce.

## AUTHORITY OF THE SECRETARY

Sec. 12. The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate for carrying out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to carry out the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary and appropriate for the administration of this Act.

## CIVIL PENALTIES

Sec. 13. (a) Subject to the provisions of subsection (b) of this section, whoever violates this Act may be assessed a civil penalty of not more than \$10,000 by the Secretary.

(b) In determining the amount of any penalty under subsection (a) of this section, the Secretary shall consider the previous record of the person in complying with the Act and the gravity of the violation.

## RELIEF

Sec. 14. (a) Any person who is given a polygraph examination in violation of this Act may bring a civil action against the polygraph examiner in the United States district court in the district in which the alleged violation occurred or in which the examiner has its principal office.

(b) Upon a finding of a violation of this section, such court may grant appropriate relief, including the imposition of a civil fine of not more than \$10,000.

(c) In addition to the relief provided in subsections (a) and (b) of this section, an employee or prospective employee seeking relief from a violation of this Act in a jurisdiction in which the certification requirements of section 7 of this Act have not been complied with, shall be provided relief in accordance with the provisions of sections 11(b), 16, and 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(b), 216, and 217). Amounts owing to a person as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216 and 217).

(d) The remedies provided by this Act shall be exclusive and may not be construed to permit a cause of action by an examinee against any party other than an employer, a prospective employer, or a polygraph examiner.

(e) If a State or political subdivision thereof is in compliance with section 7 of this Act, any person seeking relief under this section must first exhaust the remedies of the administrative plan of the State or political subdivision thereof.

## EFFECTIVE DATE

Sec. 15. This Act shall take effect one year after the date of enactment.

Mr. YOUNG of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the

RECORD, inasmuch as it has been previously printed in the RECORD and copies have been made available to the interested parties.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

(By unanimous consent, Mr. YOUNG of Florida was allowed to proceed for 5 additional minutes.)

Mr. YOUNG of Florida. I thank the chairman.

Mr. Chairman, I would like to say to my colleagues I have been here on the floor and have heard the debate from the very beginning this afternoon. I would like to compliment all those who participated in the debate and presented what I think is a reasonable and logical debate.

I offer this amendment in the nature of a substitute for myself, as the author of the amendment last June which provided polygraph services for our national security efforts, and for my friend and colleague from Georgia, Mr. DARDEN, who is a distinguished Member of the House of Representatives and who also served, in a former life, as a prosecuting attorney with great exposure to the use of polygraph.

Mr. Chairman, the substitute does not prohibit the use of polygraphs. H.R. 1524, however, originally set out to prohibit the use of polygraphs. But in committee they adopted several amendments that exempted certain types of industry as well as government. It is my understanding on the floor later today they have agreed to accept additional amendments that would provide additional exemptions to the prohibition that H.R. 1524 would bring to the use of polygraphs.

Mr. DARDEN and I suggest a different approach. We agree, for example, with those speakers who have made the point that this is really a rights issue—the right of the employee. We agree with that. We would say to you, Mr. Chairman, that our substitute is the only legislation before the House that actually provides a “bill of rights” for those people who might be examined during the seeking of employment. We actually provide in the law a bill of rights for those employees and prospective employees who would be subject to the polygraph.

Mr. Chairman, it has also been suggested that this is a way to get at the guilty, that we are looking to prove someone guilty before they have been given a chance to prove they are innocent.

In some cases that may be the case. For example we know from the Walker spy case, that instigated the amendment last June on the national defense bill, that the authority to use the polygraph was asked for consistently by those in naval intelligence who told us it would be one of the best tools they could to deter espionage against our Nation. So we know, it is a good tool. By itself it is not a total tool, it is only part of an overall effort.

There is more to our substitute.

Our approach also protects the innocent. Yes, we are looking for the guilty, but we are also seeking to protect the innocent and ours is the only approach on the floor today that actually will bring protection for the innocent.

I would like to give you an example: Back in Florida I have a good friend who owns a number of drug stores. He began to find narcotics and controlled substances missing from his warehouses and his shelves and he could not determine who was stealing the substances. So he considered firing everyone in his business who had access to those drugs and those controlled substances.

Now that really would not have been fair because it was subsequently proved that all of the employees were not involved in the theft—just one. So instead of firing all of the innocent people, he decided to employ a polygraph examiner. Through the use of a polygraph examination, and through the extended investigation based on the results of the polygraph examination, he determined who the guilty party was.

□ 1640

The guilty party admitted it, and the guilty party was terminated. He lost his job, but innocent people were allowed to keep their jobs.

We think that the innocent should be protected, and we believe that we can protect them under the substitute that Mr. DARDEN and I offer today.

The reason we believe our approach protects the innocent and does the job that is required in private industry is that our substitute provides for minimum professional standards for polygraph examiners. One of the speakers earlier today said that many people in our country believe that any time there is a polygraph examination, it is given by the CIA or it is given by the FBI or it is given by a police agency. They made the point that that is not true, because many polygraph examinations are given by people who are not nearly as professional as those who give them for the Department of Defense. We agree with that. That is the basis of our approach.

We are asking for a Federal law that would establish certain stiff professional requirements before a person would be permitted to give polygraph examinations and, at the same time, we provide a bill of rights I mentioned earlier for those who might be required to take that polygraph examination.

We do not want to do what Mr. JACK BROOKS mentioned earlier, that is to go back to the days of the dunking tool. We do not want to use the dunking tool any more than the gentleman from Texas does. That is why we are trying to make sure that those people who give polygraph examinations are not the dunking tool professionals. We

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seek to ensure that they are able to do the job in a professional manner, that they have had the proper education, and that they have had the proper training.

Mr. Chairman, in addition, this is a States' right issue. It was mentioned earlier in debate, that some 31 States have already enacted polygraph legislation. We would like to encourage the States to take the lead—and if any State would like to go further than we go in the Federal law, in the proposal that Mr. DARDEN and I make, they are permitted to do so. In fact, if a State decided to ban polygraph altogether, they could do so under the substitute that we offer today.

It has been suggested that the polygraph is not a reliable tool. I would say that if we are going to rely only on the polygraph, only on that tool, that I would have to agree. But it is only part of an overall investigative capability.

For example, in the Walker spy case that I mentioned, one of the Walker family denied any implication whatsoever in that spy case where they were giving classified information to the Soviets. But after he was confronted with the results of a polygraph examination that indicated there was some problem in his responses to the questions, he finally confessed. He confessed that he had been lying; that he was involved in divulging national security secrets to the Soviets; and that he went on to give us additional information that was used in the case against the Walkers. We suggest that the people of the United States deserve that kind of protection, not only for national security issues, but also for private business.

As the sponsor of the bill, H.R. 1524, has suggested, he is going to exempt from his legislation some industries. So, in effect, what the gentleman is saying is that polygraph is OK here in one area but not another. Well, my suggestion is if it is OK here, it should also be OK over here, if it is done in a professional fashion.

The cost to the American consumer from internal theft is estimated to be \$40 billion each and every year. That means in the case of most retailers, that about 10 to 15 percent of the cost of their clothes that they sell, the shoes that they sell, the food that they sell, the furniture, the household items, whatever they sell, whatever your constituents go out to buy at a store at any given time, 10 to 15 percent of that cost is due to internal theft.

Mr. Chairman, I think that is a terrible tax. If we came here to the floor today asking to add a 10 percent or a 15-percent sales tax on all of those goods, I think there would be a revolution in the House. I do not believe we would ever pass that kind of a bill. But because of internal theft, the prices are increased from 10 to 15 percent.

We have to stop that, and it can be stopped. We have proof positive that

when the polygraph system is used, that the cost of employee theft goes down from 15 percent to about 1 percent of the price of goods. We have a communication from the manager of Days Inn, a motel chain. Before Days Inn used the polygraph, they had losses of over \$1 million a year. When they went to the use of a polygraph, those losses dropped to just over \$100,000 a year, a reduction of some 85 percent. That means that the cost of that theft was reduced and did not have to be passed on to consumers.

I have a letter, a case file of a television repair man who was interviewed for his job and denied ever being convicted of a crime. He denied any former problems of that type. He went out on a call from his employer and he sexually molested two small children. The records are full of this type of thing. They are also full of cases where innocent people have been protected by the polygraph. But in this case, the repairman had in previous employment been convicted of sexual molestation a number of times. Had he been polygraphed, that might have been found.

I do not use this as some kind of a scare tactic. I am just trying to give examples of the fact, that yes, the polygraph does work. We can provide many additional examples of how the innocence of people has been protected by the polygraph.

Mr. MARTINEZ. Mr. Chairman, I rise in opposition to the substitute.

Mr. Chairman, according to the testimony from representatives of private industry before my subcommittee, it was testified it would not be a part of an investigation, but it would be the only tool used to determine guilt. Therein lie the fallacy of the arguments by the gentleman in favor of the substitute.

The situation is this. I do believe that there should be standards in which we determine who is qualified to become polygraph examiners. But I believe those standards should be national and not just left up to the options of the individual States, where we already know what practices are that where polygraphs are not allowed, employers will transport citizens to areas where they are allowed, give the polygraph test, and then bring them back.

So I would assume that if it was allowed the way the substitute describes that States that had lesser qualifications for polygraph examiners, where the polygraph regulations were looser, the employers would do the same thing and move the employees to those areas.

Let me tell you another couple of reasons why I and the committee oppose the substitute. The Congressional Budget Office reports that the substitute will cost the Government \$2 million. Do we really want to spend \$2 million to put the congressional good housekeeping seal of approval on this gadget?

The Congressional Research Service reports that the substitute would create a patchwork quilt of regulations with the possibility of adjacent States having Federal, State, city, or county regulations.

The substitute claims that the prospective or current employees can volunteer to take the lie detector test. How is it voluntary when employers require the test as a condition of employment? Whenever State legislatures have blessed the lie detector by passing regulatory legislation, the use of this gadget has skyrocketed.

Mr. Chairman, I stand in opposition to this, and I want to alert the Members that when we vote on this bill, we are voting on the substitute on the next vote, not the Williams bill.

Mr. DARDEN. Mr. Chairman, I move to strike the last word.

(Mr. DARDEN asked and was given permission to revise and extend his remarks.)

Mr. DARDEN. Mr. Chairman, I rise today along with the gentleman from Florida to introduce and support the substitute which offers protection for consumers and employees through rigorous, but fair, regulation of polygraph use in the private sector.

Mr. Chairman, I want to take a moment, however, to commend the chairman, and also the sponsor, the gentleman from Montana, for bringing their critical issue to the floor of the House. I certainly agree with them that we might have a different approach to solve the problem, but I think it is one of national urgency. I want to commend them for taking the lead and bringing it forward. While we disagree on the methods that would be used, I appreciate their courage in coming forward with this very important legislation.

But as I said before, I disagree with the methods being used in H.R. 1524. What H.R. 1524 does is basically ban the use of the polygraph in the private sector.

Oh, sure, let us have a few exceptions, a few exemptions. Let us let the nuclear power industry out. Let us let out people who are involved with national security.

□ 1650

Let us leave out all Government workers; let us exclude the entire transportation industry; let us only put this burden on the businessmen of the United States.

I am saying to the Members now that we have all heard this phrase in Washington recently, which goes something like this: I am for tax reform but. Now everybody is saying: I do not think we ought to use the polygraph but.

Everybody wants their specific little exception or exemption.

So what I am saying to the Members today is that if polygraphs are a sham and a farce and a device which cannot be depended upon, why not use this

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vehicle, this legislation here today, to ban their use entirely from use in America today?

The distinguished chairman of the Committee on Government Operations was up a few moments ago saying, in very touching terms, his feelings for the protection of the rights of people who are being protected by this act.

Why not extend the same protection to Government employees? If the polygraph does not work in the private sector, it sure does not work in the public sector.

Let me, basically, go through what this substitute does. As a former district attorney, incidentally, I have come to rely on the polygraph as a very reliable investigative tool. As a defense counsel, I used it not to indicate guilt but, in many instances, to exonerate persons who were wrongfully charged with a crime.

I would point out to the Members, when it is said that the polygraph is subject to some degree of failure, that it is not perfect; I submit that it is not perfect. However, our criminal justice system is not perfect. The House of Representatives in which we stand today is not perfect. I also tell you there are more people in the prisons of America wrongfully convicted on mistaken eye witness testimony, than for any other purpose.

So, sure, polygraphs are not perfect; but they are a reliable tool.

We do two things in this substitute. One is that we impose minimum standards on the examiner to be sure that he can properly be trained to do his job. The requirements are listed in the substitute.

The second thing we do, which I think is very important, is that we prohibit the employer from using the polygraph as the sole purpose for which a person can be denied employment or fired. You have got to have other evidence. And, also, it has a bill of rights in here which prevents any individual from being asked about matters of a personal nature, sexual matters, matters having to do with that person's union affiliation or political beliefs.

So this substitute here today I think very wisely provides a bill of rights and protection to the worker, probably far more protection than is provided by H.R. 1524.

I want to say, in conclusion, that 333 of you voted last June 1985, to sanction the use of the polygraph in national security and in the Department of Defense.

The CHAIRMAN pro tempore (Mr. DONNELLY). The time of the gentleman from Georgia [Mr. DARDEN] has expired.

(By unanimous consent, Mr. DARDEN was allowed to proceed for 15 additional seconds.)

Mr. DARDEN. Surely, we owe the private sector the same degree and the same amount of protection that we owe the Department of Defense.

So let me say, in conclusion, vote for the substitute and against the bill.

Mr. BARTLETT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the substitute.

(Mr. BARTLETT asked and was given permission to revise and extend his remarks.)

Mr. BARTLETT. Mr. Chairman, I rise in strong support of the substitute that is offered by the gentleman from Florida and by the gentleman from Georgia. I rise to support the substitute and to oppose the bill.

It seems to me that there are some essential differences between the bill that is before us and the substitute that is offered. It seems to me that the essential difference is that the bill would prohibit the use of the polygraph in virtually all circumstances in the private sector, and the bill that the two gentleman have constructed and are proposing as a substitute would permit the polygraph to be used to protect employees' rights and permit the polygraph to be used as one tool, not the sole tool—it would prohibit that. It would permit it to be used as one tool but not the sole tool.

I think what the gentleman from Florida has done with his substitute is to acknowledge the need from time to time that the polygraph be used to protect the employees, it is to create minimum standards that States then can and sometimes do adopt and say that the polygraph cannot be used as the sole test but can be used as one test.

I would like to yield to the gentleman from Florida [Mr. YOUNG] to clarify some of the things that are in this very well-crafted piece of legislation that does precisely what needs to be done to protect employee rights.

As I understand, and I would ask the gentleman, under his legislation, the substitute polygraph bill, the polygraph examiners must meet specific requirements. Could the gentleman elaborate on some of those requirements?

Mr. YOUNG of Florida. If the gentleman will yield, I appreciate the gentleman's comments. He is exactly right. In this substitute there are two pages of protections for the rights of the examinee—the person who might be examined.

For example, the examinee would have to sign a notification prior to any polygraph examination, and that notification would state that he is doing it on a voluntary basis. He is not required to take that test.

Mr. BARTLETT. The gentleman is saying that he has to sign a written notice prior to the examination?

Mr. YOUNG of Florida. That is correct. And that notice includes the fact that he is doing it voluntarily.

Now, during that test, the examiner may not inquire into an examinee's religious belief or affiliations, he may not inquire into beliefs or opinions regarding racial matters, he may not in-

quire into political beliefs or affiliations, he may not inquire into sexual preferences or activities unless—and this is a very important exception—unless it is necessary to determine the qualifications of the employee to be employed by a nursing home, where so many of our elderly Americans spend the rest of their lives, a rest home, a sanitarium, a hospital, or a day-care nursery.

So in those cases where we have a right and an obligation to protect senior citizens or children in those institutions, those type of questions would be permitted.

Mr. BARTLETT. I would ask the gentleman, further, as I understand the intent of the gentleman's substitute is to say that the polygraph, then, could not be used as a sole criteria but merely as one additional tool.

So does the gentleman have a prohibition that no one could lose their job based solely on a polygraph test?

Mr. YOUNG of Florida. The gentleman makes a very valid observation, and I thank him for that. That is correct. Our law provides that the polygraph will not be the sole determining factor. It further provides that the examinee may at any time terminate the polygraph examination, after the first sentence, after the first question, halfway through the examination, or wherever. He may terminate it and still he could not lose his job or be denied employment strictly because of that.

Mr. BARTLETT. And I would ask the question that, as I understand it, the person being examined could obtain a written copy of all the questions and his responses, merely for asking?

Mr. YOUNG of Florida. Exactly.

Mr. BARTLETT. Are there penalties provided in the gentleman's substitute if an examiner violates the legislation?

Mr. YOUNG of Florida. Yes. We provide in this substitute that the examinee who feels his rights have been violated may file an action in Federal court, and the fine would be up to \$10,000.

Mr. BARTLETT. I thank the gentleman for his clarification.

Mr. Chairman, it seems to be that what we have is a choice between a sledge hammer approach and an approach of the gentleman from Florida in the substitute that would provide very precise and real protections. So rather than to allow this House to simply vote on the title, I think that what the gentleman is proposing is a way to provide those protections without that sledge hammer of eliminating all use of what is used in an area of employee rights.

And the gentleman from Florida said something during his opening which I think is correct, and that is that this is an employee rights piece of legislation. The gentleman's substitute does provide for the rights of employees.

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The CHAIRMAN pro tempore. The time of the gentleman from Texas [Mr. BARTLETT] has expired.

(By unanimous consent, Mr. BARTLETT was allowed to proceed for 1 additional minute.)

Mr. BARTLETT. The employees who would be protected by the substitute and would be harmed by the bill are those employees who are in high risk, ex-felons, young people, persons who have lost a previous job, and the polygraph used as one tool can help him to get that job. It protects those fellow employees who are falsely accused. It protects employees during taking the test and it protects the consumers who should not have to pay the higher prices due to theft and pilferage.

I think the gentleman approaches the subject correctly and with an idea of employee rights.

Mr. SKELTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the substitute.

Mr. Chairman, I approach the subject, of course, in favor of the original bill and against the substitute, the whole subject, with trepidation. A number of years ago, I had the opportunity to serve as the Lafayette County prosecuting attorney back home in Missouri, and on several occasions, I was aware of and knew of the administration of polygraph tests to people who were suspected of criminal activity in one form or another. As a result of the experience that I had, in some cases, at best, there was inconclusiveness. On two occasions, I have good reason to believe that people "beat" the test, that these are far from reliable operative tests and that they are no better than the person who gives them. We are fortunate back home in my county right now to have a sheriff who has been either a deputy or a sheriff for some 27 years, and I think no one would question his ability. But compare this gentleman, Sheriff Gene Darnell, in my home county, with someone who has had 6 weeks of training and is a certified polygraph tester and I think that there would be a great deal of difference between the two.

I need not go on at length about this, but I would like to question one bit of this, that there is language that would tend to cause us to believe that the polygraph test under the substitute would not be the sole tool, but I can hear people, unfortunately, saying, "But, you know, they flunked the lie detector test."

In all truthfulness, I have some serious problems or qualms about the issue and, because of my past experience, I am driven irresistibly in favor of the bill.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I want to join my colleague in opposing the substitute and supporting the bill.

The polygraph is not a science, and this amendment tries to put the Good Housekeeping stamp of approval on the use of polygraphs in this country—and you cannot do it.

The basic problem is that the polygraph is not reliable. It tests your heart rate, your breathing rate and your sweat, or your galvanic skin response, and all of those can be modified or subjected to change by reason of people who are hyperreactors, who are very, very nervous or who are on medicine, such as beta blockers, which prevent those things from happening the way the polygraph operator would want them to be.

The polygraph is very intimidating and it can take a person, an honest person, and turn that person into a wild, scared person, for fear of the machine that is strapped around them, and it is unfair to use that as a tool to deprive that person of a job.

I think the gentleman also makes a good point concerning the contention that under the substitute the polygraph could not be a sole criteria, only one of the criteria. That is ridiculous, because if an examiner says that the gentleman or the gentlewoman flunked the test, I guarantee that person is not going to get the job.

So I join my colleague in urging defeat of the substitute and in support of the bill.

Mr. HERTEL of Michigan. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman from Michigan.

Mr. HERTEL of Michigan. I thank the gentleman for yielding, and I also agree with his remarks. The gentleman points out very well that we will never know if it is the sole reason for the decision in firing somebody. In fact, if we looked at the substitute, it is wide open to all kinds of misinterpretations, using the word "substantial" without defining exactly what "substantial" would mean, when they talk about simply having to have the key provisions of H.R. 3916 employed by written statement by the Secretary of Labor of their State. It could be one sentence saying that they would do that without any of the facts involved as to how they will enforce it.

But let me go more to the direct issue. What the bill is designed to do is to say that someone cannot lose their job or you cannot refuse to hire someone because they will not take a polygraph test. You cannot deny someone a livelihood because they will not take a polygraph test. And I do not see the people who are supporting this substitute saying that candidates for public office, including the U.S. Congress, should have to take a polygraph test or that incumbents of Congress should have to take a polygraph test. I do not see them proposing that the Ethics Committee of this Congress and this

House should use a polygraph test. Why?

The CHAIRMAN pro tempore. The time of the gentleman from Missouri [Mr. SKELTON] has expired.

(On request of Mr. HERTEL of Michigan and by unanimous consent, Mr. SKELTON was allowed to proceed for 1 additional minute.)

□ 1705

Mr. HERTEL of Michigan. Why in the substitute do they not require polygraph tests for elected officials or candidates for public office? Simply because they are unreliable, they are not recognized in court, and therefore we should not take innocent individuals and take away their livelihood or deny them the right to have a job and apply for a job because they will not be intimidated by being forced to take such a test.

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman.

Mr. DARDEN. Is the gentleman aware that under 1524 all Government employees, both from the Federal, State, and local are exempt? So the very bill here exempts all employees of any government.

Mr. SKELTON. If I may reclaim my time, I understand what the gentleman is saying. But we are speaking about people in their ordinary, day-to-day activities. I really think that it is an invasion of privacy of the greatest sort to be subjected to this.

The CHAIRMAN pro tempore. The time of the gentleman from Missouri [Mr. SKELTON] has expired.

(On request of Mr. HERTEL of Michigan and by unanimous consent, Mr. SKELTON was allowed to proceed for 1 additional minute.)

Mr. SKELTON. I yield to the gentleman from Michigan [Mr. HERTEL].

Mr. HERTEL OF Michigan. I just want to answer the gentleman from Georgia.

That is exactly the point: Why should we have different classifications in this country? Some people have to take it; some people do not have to take the test. If the test was so good, the courts would have recognized the results of the polygraph test.

The fact is it has come out in this debate and in past history that they are not 100 percent accurate nor anywhere near it. So we should not have different standards, and we should not say that some people are required to take this test to get a job or to keep their job.

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. SKELTON. I yield to the gentleman.

Mr. DARDEN. I would respectfully point out, though, that you, as a Member of Congress, are actually exempt from a polygraph test under this.



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Mr. HERTEL of Michigan. That is my point. Why should I be exempt if we are going to stick it on somebody else if they have to take the test? We should be treated the same; we should not be exempt if we allow others to be required to take it.

Mr. DARDEN. Not under this bill; we are not treated the same under this very bill.

Mr. HERTEL of Michigan. That is exactly my point: You are treating us differently under your own substitute, and under the bill because it is already an existing law. That is because the standard cannot be met for accuracy for taking and giving a polygraph test.

That is why we should oppose the substitute and not give, as the gentleman said, approval for these means of testing and denying employment of American citizens.

Mrs. VUCANOVICH. Mr. Chairman, I move to strike the requisite number of words.

Mr. YOUNG of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. VUCANOVICH. I yield to the gentleman.

Mr. YOUNG of Florida. I thank the gentlewoman very much. I am sorry the gentleman from Missouri had to leave, but he made this statement, and I quote:

"That a polygraph examination is no better than the person who gives it." I think he has got a lot of merit there. The substitute that we offer today for H.R. 1524 provides professional requirements for those polygraph examiners.

We agree with him, and we want them to be qualified and professional in the way that they conduct their business.

Mrs. VUCANOVICH. Mr. Chairman, today we are discussing the issue of polygraph testing and its use and effectiveness in the workplace. At issue is not whether polygraph testing is good or bad—certainly we wish we lived in an ideal world where there was no need for such a tool, where employee theft and crime did not occur—but we don't reside in such a Utopia, and internal theft has cost the businesses of our country hundreds of millions of dollars a year—many more times the amount lost to robbery. We cannot escape the fact that ultimately it is the consumer who pays with increases in the cost of goods and services.

While we recognize that this imperfect world we live in necessitates the use of polygraph testing in certain situations, we also recognize that abuses can and do occur. Abuses occur where there are no standards for training and conducting the tests. Abuses occur when the rights of the individual being examined are not a priority.

The answer is to eliminate the abuses, not the uses of the polygraph. Polygraph testing in employment settings, be it prehire interviews or internal investigations, can be an effective device when used properly. It is an effective, albeit imperfect tool. It is cer-

tainly as reliable, if not more so, than the personal interview, where the one conducting the interview cannot avoid subjective deductions, and consciously or not, projects his or her values, likes and dislikes, while listening to the responses, and analyzing every movement, as well as the verbal and physical nuances. Are the person's eyes blinking too rapidly? Is he or she nervously shuffling papers? What does that mean? What message is being conveyed? What is the message received? Is it accurate? Can the conclusions drawn by the interviewer be completely objective and fair to the individual being questioned? Of course, there can be no such assurances.

In the House of Representatives we have recognized the legitimate use of the polygraph. We did this just last year when by an overwhelming vote of 333 to 71, we approved an amendment to the Department of Defense authorization bill, requiring polygraph testing to be used as a screening device with employees who have access to sensitive information. And since we have already acknowledged polygraph testing to be a legitimate and effective tool for the Government to use, how can we deny its credibility and effectiveness for the private sector? Surely we cannot condone such a double standard—strongly supporting legislation to allow and even require the Government to conduct polygraph tests on its employees and prospective employees, while saying to private businesses that the results of such testing are inaccurate and unfair, and therefore cannot be used? Obviously the use of polygraph testing has its proper place in both Government and private business, when used within certain guidelines.

Mr. MARTINEZ. Mr. Chairman, will the gentlewoman yield?

Mrs. VUCANOVICH. I yield to the gentleman.

Mr. MARTINEZ. Originally, it was not in the bill, but because there was a precedent set, or because there was that concern for national security and it was demonstrated by that vote that the gentlewoman alludes to, that when it was apparent to the author of the bill that there might be in the private sector that "like threat" to security, that is why Government entities dealing in national security defense contracting were allowed to be offered as an exemption and accepted by the author for the very same reasons.

But what we have done is exactly the same thing that we have done with national security and in the public work force. In the private work force, allow the like situation to exist for the equity to be there on both sides.

Mrs. VUCANOVICH. Mr. Chairman, tourism is Nevada's No. 1 industry and casino gaming is the major element in this industry—essential to my State's economy, which has the highest tourism dependency of any State in the Union—more than 80 percent of the

tourist spending in our State comes from gaming. Obviously, Nevada has a vested interest in the integrity of these operations—both to protect the patrons and to protect State revenue generated from these operations.

The Nevada gaming industry, in full cooperation with our State regulators and law enforcement agencies, uses the polygraph along with other methods, to insure the integrity of applicants, employees, and overall operations. It is a tool the industry uses to police itself, and without it, our State gaming regulators and investigators will be further burdened and the blow to tourism, our major industry, will be severe—

The CHAIRMAN. The time of the gentleman from Nevada [Mrs. VUCANOVICH] has expired.

(By unanimous consent, Mrs. VUCANOVICH was allowed to proceed for 1 additional minute.)

Mrs. VUCANOVICH. The polygraph provides a strong deterrent to theft and other misconduct that adversely affect the gaming industry. It has been an effective tool in controlling cash handling, drug trafficking, and other matters in cage, casino, and slot operations. In addition, the removal of criminal elements and dishonest personnel provides a positive boost to the morale of the vast majority of employees who are honest and law abiding. I have received over 100 letters from such employees who realize that the use of polygraphs is essential to the integrity of the industry and important to them as well.

The Young-Darden substitute, the Polygraph Reform Act of 1985, is the proper approach to regulating the use of polygraph testing, ensuring that examiners meet certain standards, while guaranteeing the rights of individuals being examined. The Young-Darden substitute recognizes the need to permit the use of polygraph testing, while at the same time recognizing the need to provide uniform, strict standards. It is a balanced bill, protecting both the employee and the employer. It is a moderate alternative, allowing the private sector the same protections afforded the Government.

This alternative bill is the reasonable answer to a critical problem that is growing and costing our businesses and the public untold millions of dollars each year. I strongly urge my colleagues to support the Young-Darden substitute.

The CHAIRMAN. The time of the gentleman from Nevada [Mrs. VUCANOVICH] has expired.

(On request of Mr. WILLIAMS and by unanimous consent, Mrs. VUCANOVICH was allowed to proceed for 1 additional minute.)

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield?

Mrs. VUCANOVICH. I yield to the gentleman.

Mr. WILLIAMS. We shared your concern, myself as sponsor of the legis-

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lation for which the substitute now stands, and members of the committee shared your concern about the ability or inability of gambling enterprises to polygraph their employees.

We called a company that owns one of the major casinos in both Nevada and New Jersey, and asked them if there was any difference in their losses and thefts between the casino which is in the State which allows polygraphing and the casino which is in the State that does not. They said, "No, there is no difference."

Mrs. VUCANOVICH. Would you tell me who gave you that response?

Mr. WILLIAMS. The owners of Harrah's Club. Just a few days ago, if the gentleman will continue to yield, this was in the Las Vegas Sun, quoting:

Ridiculous contraptions that don't work are the words Steven Wynn used to describe polygraph machines. The Chief of the Golden Nugget goes on to say "That the policy of his company is that since the polygraph machine has been proven worthless, we don't use it."

Mr. VALENTINE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me say at the outset that I think I can count and I recognize that there are a lot of Members of this body committed to the legislation. I want to compliment the sponsors and I respect them all, but I think they are wrong.

I rise in support of the committee substitute, H.R. 3916.

Mr. Chairman, the subject of polygraph testing in the private sector has raised a controversy that is difficult to resolve.

On the one hand, the proponents of such testing point to the need to prevent dishonesty in the workplace. They say that polygraphs are an effective tool in discovering potential and current employees who could harm the company for which they work.

On the other hand, critics of polygraph point to the right of individual citizens to protect their thoughts and opinions from arbitrary invasion. They say that polygraphs are unreliable and therefore dangerous to the honest employee.

All of these people are partially correct in their views. This fact makes it all the more difficult to evaluate the substance of their claims.

H.R. 1524, in my view, goes too far in paying heed to the fears of polygraph opponents. This bill would make it impossible for the business community to benefit from polygraph testing that is conducted in a sensible way.

I believe that we can find a sensible way, and I believe this solution is to be found in the amendment, offered in the nature of a substitute, called H.R. 3916.

This amendment offers protection to individual rights while allowing employers the use of tests conducted with proper protection in mind.

H.R. 3916 sets minimum standards for the conduct and use of such testing:

It ensures that testing is voluntary.

It prohibits questions that pry into religion, race, political beliefs, sexual preferences, or activity in labor organizations.

The bill allows the examinee to stop the test at any time.

It requires testers to review their questions in advance with the persons they examine.

It states that employers may take no action based on test results alone.

The bill also guards test results from disclosure to unauthorized persons.

H.R. 3916 enforces these rules by allowing States and local governments to set up plans in line with the standards described in the bill. The Secretary of Labor will have power to enforce these plans. Those who violate the bill's standards will be subject to fines of \$10,000 and to penalties described by the Fair Labor Standards Act of 1938.

There is without doubt a public need to ensure employee honesty, especially in certain sectors of the economy. In pharmaceutical firms, for instance, the safety of the public depends largely on the protection of inventory. Dishonest employees must be prevented from gaining access to these stocks. The same is true for the banking industry, where millions of dollars in assets and transactions must be protected from misuse.

One major insurance company estimates that one-third of all business failures are caused by employee theft. This and other economic crime against business damages the economy by up to \$200 billion annually.

Are polygraphs an effective solution to these problems? Private business has long recognized the great value of polygraph testing. The Committee on Education and Labor has determined that 2 million polygraph tests are administered in the private sector each year. This is more than all the examinations in criminal cases and in the Government combined.

During the last 10 years, the number of lie detector tests has tripled. Surveys have indicated that approximately 20 percent of all major businesses in the United States use polygraph testing. In banking, this figure reaches 50 percent. In retail operations, the figure is 60 percent.

The reputation of polygraph testing as a valuable tool is buttressed also by the use of such testing in almost all Federal law enforcement, intelligence and counterintelligence agencies.

All of these figures indicate that polygraph testing is a popular, widely recognized method of selecting potential employees and evaluating the honesty of employees in sensitive jobs. Passage of H.R. 1524 would unfairly prohibit private employers from using this widely recognized tool.

I urge my colleagues to vote instead for the amendment in the nature of a

substitute, H.R. 3916. I wish to commend my colleagues BILL YOUNG and BUDDY DARDEN for their work on this substitute bill. It will protect the constitutional rights of polygraph subjects while guarding the legitimate rights of employers. Because this bill so well secures the rights of all the parties involved in polygraph testing, it deserves our approval.

I do not think that this Congress wants to say to American business that we reserve the right in the Federal Government to use a polygraph all that we want to, in every way in congressional offices, without any limitation whatever; but the American businessman shall not touch it. If the polygraph is the evil and sinister machine they say it is, then let us abolish it for every use.

How can we stand here and say to business in this country that the guy who operates a jewelry store cannot use a polygraph, but the Federal Government can.

Mr. LIVINGSTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. STUMP. Mr. Chairman, will the gentleman yield to me?

Mr. LIVINGSTON. I am happy to yield to the gentleman.

Mr. STUMP. Mr. Chairman, I rise in support of the amendment in the nature of a substitute to H.R. 1524 offered by the gentleman from Florida [Mr. YOUNG]. The substitute takes the proper approach in dealing with use of the polygraph in the private sector—it does not ban such use, but it does require that such use meet specific standards designed to protect the interests of both employers and employees.

As ranking member on the Intelligence Committee and as a member of the Armed Services Committee, I have strongly supported the use of the polygraph in personnel security screening for sensitive national security programs. The Federal agencies which use the polygraph to protect the secrets involved in such programs have careful safeguards designed to protect the rights of employees and prospective employees who take a polygraph examination. The amendment offered by Mr. YOUNG would provide similar safeguards for the private sector.

I would note that the amendment offered by Mr. YOUNG has been crafted carefully to ensure that it does not impair national security polygraph programs, including contractor industrial security programs, conducted by Federal agencies.

I urge my colleagues to support the Young amendment in the nature of substitute.

Mr. LIVINGSTON. Mr. Chairman, I rise in support of the Young-Darden substitute to H.R. 1524, and I wholeheartedly agree with the sponsors that a total ban on the use of polygraph tests by the private sector is inappropriate and dangerous. I believe that it

is in everyone's interest that polygraph results be as accurate as possible. In my own State of Louisiana, laws have been passed which establish guidelines for training and licensing of polygraph examiners, set requirements for the equipment used in the test, and institute protections for the rights of those taking the exam.

As I have stated before, I don't see merit in any Federal involvement in this area at all, for I believe the States are fully capable of handling this matter, but at least, it would be better to pass legislation modeled on current State law requirements than to simply outlaw the use of the polygraph. That is why I support this substitute amendment.

This substitute provides strict standards for the use of polygraphs by employers in the private sector, governs how examinations may be conducted, and prohibits employers from taking any action based solely on the results of a polygraph test. In addition, this measure protects State programs already in effect and encourages the remaining States to set up programs of their own. I believe that if something must be done by the Federal Government in this area, the best way is to set up standards for the use of polygraphs rather than an outright ban.

There will be a number of amendments offered to exempt certain businesses from the provisions of this bill. In fact, H.R. 1524 itself provides for three exemptions from the total ban provisions included in the bill. But I would submit that opponents of polygraph tests are inconsistent in their arguments. On one hand they say that polygraph tests are not accurate enough to have any value, then they go right ahead and make exceptions to a total ban which in effect admit that there are legitimate uses for such tests.

Mr. Chairman, H.R. 1524 is bad legislation, and I urge my colleagues to support the Young-Darden substitute amendment, so that if we are to take any action, the action we take will at least be reasonable.

Mr. Chairman, we had a colleague on the floor a little while ago who had some questions that I would now propound on his behalf, since he could not stay, to the gentleman from Florida, one of the coauthors of the amendment.

Section 5, subsection (a)(1) of the amendment provides that an employee or prospective employee who is asked to take a polygraph shall sign a notification stating, among other things, that "such examinee is consenting voluntarily to take the examination".

I would like to ask the maker of the amendment, is the intent of that language to provide that an employee or prospective employee must voluntarily agree to take a polygraph examination?

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman will yield, my

answer is "yes," that is exactly our intent.

Mr. LIVINGSTON. It must be voluntary?

Mr. YOUNG of Florida. Yes.

Mr. LIVINGSTON. And if the employee or prospective employee declines and refuses the polygraph, may the employer take any employment action—such as firing, denying a promotion, refusing to hire, or any disciplinary action—because of or based on the refusal?

Mr. YOUNG of Florida. No, sir.

Mr. LIVINGSTON. Similarly, section 5, subsection (a)(3) requires the employee or prospective employee to be informed that he or she may terminate the examination at any time after it has begun. Is the intent of this language that no employment action may be taken against the employee or prospective employee for terminating the examination?

Mr. YOUNG of Florida. If the gentleman will yield, yes, that is the intent.

Mr. LIVINGSTON. Section 7 of the amendment provides for certification of state or local plans for regulating the use of polygraphs. Subsection (3) of that section requires that such plan "provide assurances that [the] standards and the enforcement of [the] standards [in the state or local] plan shall be at least as effective as the standards set out in this Act". Is the intent of that language that states and/or local governments may enact, or maintain if they have previously enacted, laws or regulations more strict than the language of this bill, including, if the state or the local government so chooses, to totally ban the use of polygraphs?

Mr. YOUNG of Florida. That is the intent and the effect of the Young-Darden substitute.

Mr. LIVINGSTON. Mr. Chairman, I appreciate the gentleman's response.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I appreciate the gentleman yielding, because I have some questions along those lines.

I am deeply troubled by some of the provisions of this law; in particular, one that the gentleman was referring to with respect to whether or not a person could be dismissed or fired or whatever; however, the way I read the law, and I would like to be corrected if I am not correct, is that a person who refuses to take any examination could be not hired or could be fired.

Now, that is the way I read the law, and if I am incorrect, I would appreciate being corrected.

Mr. LIVINGSTON. That is certainly not my understanding, as I understood the answer of the gentleman from Florida.

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from Georgia.

Mr. DARDEN. Mr. Chairman, I would like to certainly state that under no circumstances can the polygraph be the sole determinant as to whether someone is not hired or discharged. The substitute specifically prohibits using the polygraph as the sole determinant.

Mr. JEFFORDS. That is not my question, though, if the gentleman will yield.

My question is, based upon the wording of sections 4, 5, and 6, it appears to me that although if a person consents to and takes the examination, you could not use that as a sole reason for not hiring or for firing; but it does not answer the question that appears to me from reading that, that you could refuse to hire or you could fire someone if they refuse to take the polygraph examination. That is quite a different question and that is the way I read the amendment.

Mr. DARDEN. Mr. Chairman, if the gentleman will yield further, I would inform the gentleman that under the bill as written and the intent of the authors of the bill, the gentleman from Florida [Mr. YOUNG] and I, is that refusal to take the polygraph in no way could jeopardize or in any way cause a person not to be hired or discharged.

Mr. LIVINGSTON. Mr. Chairman, if I can reclaim my time, certainly the gentleman can get his own time in a few minutes, I would simply say that that is not my understanding in my reading of the bill and certainly that is not what I would intend as I rise here to support this substitute. I think it is a good substitute.

More importantly, I think that this is truly a matter that can easily be resolved—

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. LIVINGSTON was allowed to proceed for 30 additional seconds.)

Mr. LIVINGSTON. Mr. Chairman, it appears quite apparent that this is a matter that can easily be resolved on an ad hoc basis in each individual State.

Here we are again sitting here in the hub of the Nation, in the Nation's Capital, dipping into the province of State legislatures. There is no reason in the world why this bill should be before us, but since it is, I certainly wholeheartedly endorse the Young-Darden substitute and ask my colleagues to support it.

Mr. ANDREWS. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the substitute.

Mr. Chairman, let me first say that I think an employer does have a legitimate grievance when he interviews a prospective employee. He is at somewhat of a disadvantage when he is

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trying to ascertain whether or not that person is credible as to an issue of whether he will steal or not from that employer; but what we do know about these machines is that they are fallible. What we do know is that these machines can be misdirected if a person's temperature is wrong, if their body chemistry happens to be a certain way, if the operator is not well trained, if the machine is not working that day, we know that machine is fallible.

What we also need to appreciate I think in this debate is what these statistics mean in the real world. For 4 years I worked in the district attorney's office in the Houston area. Most of that time I prosecuted organized crime cases, heavy drug organizations, robbery and theft rings, organized crime. We took most of the cases from the investigative stage through to trial.

In one particular case I tried an alleged robber. This young person went up to a booth in a parking lot where they reproduce film, in a sweatshirt with a hood pulled down over his face, and pointed a pistol at a young 20-year-old woman and demanded her money. The robbery took maybe 60 seconds, maybe a minute and a half. The robber left with the money and ran away.

She picked the suspect out of a lineup and insisted that, "Yes, that is the person that robbed me that day."

The defendant had five alibi witnesses and he insisted on taking a lie detector test. The Houston Police Department administered that test and he passed it with flying colors.

We were prepared to dismiss the case, but the young woman insisted, "That is the guilty man that robbed me that day," and I tried the lawsuit.

When the jury came back with a verdict of 25 years for this defendant to do, a young lawyer leaned forward that was sitting behind me in the courtroom and he said, "Do you really think he did it? Do you really think he was guilty?"

Everyone in the courtroom knew of the lie detector test except for the jury that heard the evidence.

A few weeks later this defendant was brought manacled into the courtroom to receive his formal sentencing and be sent away to the penitentiary, and as he stood in the back of the room and looked up to the bench, to the judge that was about to sentence him, he leaned over to the bailiff and whispered in his ear and said, "You know, if I had killed that girl that day, I would never be here now."

These machines do not work and it is time that this Congress stands up and says something about them. Make no mistake about it, if you vote for this substitute you are certifying this equipment. You are certifying these faulty machines.

I urge defeat of this substitute and a vote in support of this important legislation.

Mr. JEFFORDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. COLEMAN of Texas. Mr. Chairman will the gentleman yield?

Mr. JEFFORDS. I would be happy to yield to the gentleman from Texas. (Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. Mr. Chairman, I rise in opposition to H.R. 1524, the Employee Polygraph Protection Act.

I am opposing this bill not because I doubt the stories of abusive employment practices which have taken place throughout the workplace due to increased reliance on a sometimes inaccurate and unreliable procedure, but because I do not believe that Congress should be creating two classes of individuals in relation to polygraph tests generally.

If, as many have testified, the overwhelming body of evidence suggests that these tests are unscientific, inaccurate, and unreliable in the workplace and, therefore, should be prohibited in the private sector, then why are we permitting their use—in any form—against only Government employees. Aside from the obvious flawed logic behind this position, a vote for this bill is a vote to allow discrimination in the workplace against all Government employees whether they are local, State, or Federal.

Instead of pretending this inconsistency is premised on some tremendous concern about the recent rash of espionage cases, this House would do well to direct its attentions to screening methods of those public employees in sensitive national security positions which promise a degree of reliability and usefulness in which we feel confident.

Mr. JEFFORDS. Mr. Chairman, I certainly commend the previous speaker for his excellent statement and somewhat emotional statement.

I would like to try to clearly draft where the issues are here in my mind. I might well have been able to support a substitute which provided some more leeway for the States. However, I just cannot support this substitute.

The bill that we have before us, the original bill, basically eliminates the use of polygraphs in employment practices except under certain circumstances, some of which we have already provided in the bill and some of which would be provided later on, which have to do with national security and health and safety issues where the public may be threatened in that sense. Thus, we recognize that although generally these are not reliable, they may be of some help, under those circumstances, to raise some questions which should be investigated where national security and health and safety issues are involved.

However, we have an extremely different situation with respect to the original bill and the substitute. The difference is simply this: The bill before you, by the committee, eliminates the use of polygraphs for employment practices except in certain situations. The substitute gives a right to conduct polygraph exams in all

cases except where there might be some violations of the rules and regulations set out.

That is a vast difference, and the question is whether we want to give a right here to businesses to conduct polygraph exams. I do not believe we do.

For instance, there is a hybrid system in the substitute which allows Federal, State, and local agencies to conduct polygraph exams, and it might have been better had they left the original bill the way it was where-in they had to be approved by the Department of Labor for those plans, but they have struck that out and they have said, instead, that it is deemed to have been approved when you submit an administrative plan. That is one problem.

It appears to me that by invoking the commerce clause in section 2(1) and then going on with respect, under section 3, to set forth the uses of polygraphs, that they have, in effect, said that States themselves cannot prohibit the use of polygraphs.

Mr. DARDEN. Mr. Chairman, will the gentleman yield for a question?

Mr. JEFFORDS. I will if I have time at the end, but the other side has gone through and said the opposite. I would like to bring out these points.

There is going to be a substantial cost to this amendment, and none to the original bill. It is going to cost the Department of Labor somewhere, according to the CBO, between \$1 and \$2 million to administer it, and that is an unnecessary cost. It is much better to go with the approach of the bill.

Also, as I previously pointed out, and I will not go over it again, it appears to me very clear that under this bill if someone refuses to take the polygraph exam, they can be refused to be hired or can be fired. I do not agree or see anything which says otherwise.

It protects the present polygraph licenses; whereas, new polygraphers must perform internships and take exams previous to continuing. Some it exempts and grandfathers. Those may be bad polygraph examiners who have performed more than 200 exams for a whole year.

Also, although it claims to allow different kinds of polygraph examinations in section 3(a), it then eliminates the use of anything except those currently being used by the polygraph examiners.

It precludes the private right of action under 14(b), and I would point out this is probably just a drafting error, but on that section, by referring to a section instead of the act, it practically eliminates all enforcement and all utilization of the relief.

Under 14(a), if you take a look, if you have a violation, ordinarily if there is a violation of an agent of a company, that liability goes to the corporation or the business. Under this it just goes to the polygraph examiner,

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which probably eliminates any effect of relief.

So I think there are a lot of problems with this bill, but the basic problem with me is the very basic question of do we want to eliminate polygraph exams as being used for hiring practices except under very narrow provisions under the bill before us, and perhaps some to be added relative to national security and health and safety, or would we allow companies not to hire somebody because they refuse to take a polygraph exam? I think that is the basic difference.

The CHAIRMAN. The time of the gentleman from Vermont [Mr. JEFFORDS] has expired.

(On request of Mr. DARDEN and by unanimous consent, Mr. JEFFORDS was allowed to proceed for 2 additional minutes.)

Mr. DARDEN. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Georgia.

Mr. DARDEN. I thank the gentleman for yielding.

Mr. Chairman, is the gentleman aware that under the substitute that the States can still totally prohibit the use of polygraphs in their respective States and that the States, in fact, can be even more restrictive than the minimum Federal standards set forth in the substitute?

Mr. JEFFORDS. I would appreciate it if the gentleman would point that wording out to me because I cannot find it in the bill and the people we have shown it to cannot find it.

Can the gentleman tell me which section it is that says that the States can prohibit?

Mr. DARDEN. If the gentleman will yield further, we will make that available to him.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I would be happy to yield to the gentleman from Florida.

Mr. YOUNG of Florida. I thank the gentleman for yielding.

Mr. Chairman, on the other technical question that the gentleman had asked, I would like to respond if he would allow me.

Sections 4 and 5 need to be read together, because section says that:

No employer may take any action affecting the employment status of an employee or prospective employee, if such action is based on the results of a polygraph examination of such employee or prospective employee . . .

In section 5, the first subparagraph says—

Mr. JEFFORDS. Hold on. If I may reclaim my time, it goes on to say "that has not been administered in accordance with sections 5 and 6 of this act."

Mr. YOUNG of Florida. That is the point I am getting to. That is correct. But in section 5, subsection (1) says, "such examinee is consenting voluntarily to take the examination." So if

he volunteers to take it or if he does not volunteer to take it, that would be an action referred to in section 4.

So the employer may not take any action affecting that employment status based on section 5, subsection (1).

Mr. JEFFORDS. But that is not the way I read it, because suppose he refuses to take the exam?

Mr. YOUNG of Florida. Section 5, subsection (1), says that the exam is voluntary.

Mr. JEFFORDS. Right. So he has refused to take it. It is not voluntary.

Mr. YOUNG of Florida. And section 4 says that his status cannot be affected by a test given in conjunction with section 5, which says that it is voluntary.

Mr. JEFFORDS. But it does not say that if he does not take it that that cannot be used as a reason for not hiring him.

Mr. YOUNG of Florida. I think "voluntary" means you can take it or you cannot take it. It is up to the person being examined.

Mr. JEFFORDS. I hope the gentleman is right, but that is certainly not the way I read it.

Mr. BIAGGI. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to this amendment.

Quite frankly, the idea of formal standards for polygraph testing has a good deal of appeal on the surface, but those of us who have heard testimony about the abuse, misuse, and overuse of polygraph testing in the private sector know that standards are simply not enough. We need responsible, yet strict limitations on the use of polygraph testing and once the amendment process is completed here today, a process I will be involved in, I am confident that H.R. 1524 will meet that objective.

The American Polygraph Association estimates that more than two million polygraph tests are being given each year, 98 percent of which are being given by private business. That number is very troubling to me. Consider, for example, that our Nation's largest private security services provider, a company employing some 55,000 security personnel, gave only 900 polygraph tests in 1984. They have testified before our committee that they use these tests on a very selective basis, and in no case is a person denied employment or dismissed solely on the results of a polygraph examination.

Certainly, there is no company in the private business sector that could establish any greater need for the polygraph test. Why, then, do we have more than 2 million of these tests being conducted each year? Are they really necessary? My close study of this issue says no.

Not only are these tests being overused, but I am familiar with too many cases of a lie detector test being used as the sole determinant of whether a person is hired for a particular job.

That is particularly bothersome, since we know that tens of thousands of workers are wrongfully denied employment every year, either because they refused to take the polygraph test on principle or because the inaccuracies in the process have falsely judged that individual.

Admittedly, there are certain industries in our Nation that have demonstrated a proven need for the polygraph. These industries include the security industry, the pharmaceutical industry, and Government intelligence agencies. But, exemptions for these industries have either already been established in this bill, or will be established in the bill today. I am satisfied with those exemptions. They provide for the responsible and necessary use of the polygraph, while allowing the remaining provisions in the bill to prevent the abuse, misuse, and overuse of the lie detector test. This is a very fair and balanced approach.

The Darden-Young substitute falls short of the mark. Standards will not be able to prevent the unscrupulous employer from pressuring employees or prospective employees from "volunteering" to take the test, and standards will not prevent the unscrupulous employer in States that prohibit the tests to simply send job seekers to a neighboring State to take the test and, Mr. Chairman, these types of abuses are occurring.

The American work force deserves our support and protection. H.R. 1524 sends the right message, the Darden-Young substitute does not. I urge my colleagues to oppose this amendment.

□ 1740

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, I rise in support of H.R. 1524, the Employee Polygraph Protection Act, which would prohibit most uses of the polygraph in private sector employment. Passage of H.R. 1524 will protect millions of American workers—and their employers—from the abuses associated with a misplaced reliance on the polygraph machine as a "lie detector."

I want my position to be perfectly clear. If there really were such a thing as a valid lie detector, I would not be opposed to its use, just as I am not opposed to background checks and other investigations designed to determine whether employees are lying or truthful. If an employee tells an employer, "I am a high school graduate" or "I have never used narcotics" the employer has every right to investigate whether the employee is telling the truth. But a polygraph machine won't provide the answer.

According to the Congressional Office of Technology Assessment, as employment screening devices, polygraph tests give wrong answers nearly as often as they give correct answers. The result is that thousands of innocent, talented potential employees are unfairly



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denied, jobs, while employers are falsely lulled into hiring thousands of undesirable people who manage to pass their polygraph tests.

It is no wonder that the past chairman of the Georgia Board of Polygraph Examiners testified that he would be unwilling to take a polygraph test in his State if his job and career were to depend on the results.

No scientifically valid study has ever shown that polygraph tests can detect lies. What studies there are indicate that polygraphs wrongly identify innocent subjects from 5 to 88 percent of the time. Thus, even under the best of circumstances, 5 innocent individuals in 100 will be labeled as guilty, denied a job, or fired. In the worst scenario, 88 innocent people out of 100 would be incriminated.

It is no surprise that in the overwhelming majority of State and Federal courts, polygraph tests are inadmissible as evidence unless all parties consent to their admissibility. Many courts, including those in my own State of Michigan, will not permit the use of polygraph tests as evidence even when the parties stipulate to their admissibility. The courts do not admit polygraph evidence because there is no way to determine its reliability. Employers interested in an accurate evaluation of their employees should follow the courts' example.

It is wrong to allow employers, however well-intentioned they might be, to subject job applicants or employees to the Russian roulette of polygraph testing. The congressional Office of Technology Assessment estimates that as many as 50,000 innocent employees lose their jobs each year because of inaccurate polygraph tests, while large numbers of guilty employees—shoplifters and embezzlers—are wrongly exonerated. Employers lose both ways, by retaining bad employees and by losing valuable, honest, and loyal employees.

Regulation of polygraph testing is no answer. Regulation cannot transform the polygraph test into a valid lie detector. It can only create a false aura of validity and encourage more employers to rely on polygraph testing. I urge my colleagues to defeat the Young and Darden substitute and to vote for H.R. 1524.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Darden-Young substitute amendment. This amendment would create a Federal regulatory scheme for the polygraph practice in the private sector and, in doing so, would legitimize it as an accepted part of the American workplace.

As I have indicated previously, the polygraph has no acceptable place in the screening of workers who are not under suspicion of wrongdoing. The practice of polygraph screening itself is fundamentally flawed from a scientific standpoint and inherently abusive under American principles of justice.

The American Psychological Association has condemned polygraph screening by its members as unethical. The Darden-Young substitute, however, authorizes the practice; its regulatory approach is a wolf in sheep's clothing. Under its terms, every private polygrapher in the country who runs American workers through his

pseudoscientific tests, will have a Federal certificate of approval on his wall.

I urge defeat of this amendment.

Mr. McCOLLUM. Mr. Chairman, I move to strike the requisite number of words.

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, I rise today to discuss this issue because it concerns me greatly that we are in the process of making a choice between competing public interests, and we seem to be having a great deal of difficulty getting the dissection of the two competing interests clearly laid before the Members. I would like to do that, and reason hopefully with my colleagues about where we ought to be going on the Young-Darden amendment and on this bill.

I do not think there is any question but that there are those who rightfully point to the fact that polygraph examinations—lie detector examinations—are not always accurate. They never have been and they probably never will be. It is not an absolute science.

In the area of criminal law, I have dealt with those. I remember doing this when I was on active duty in the military. They certainly are not going to be acceptable, and they should not be in the course of a criminal prosecution where the proof is beyond a reasonable doubt in order to convict a person who is accused of a crime. But they have been used successfully by our law enforcement officials in the process of criminal prosecutions in behalf of the accused in situations that I have been involved in, and I am sure many others around the country have been. That is when there is some questionable evidence involved in the case and the accused himself oftentimes is allowed the opportunity to present a polygraph examination, conducted by a reputable lie detector giver of that examination, and he comes out according to that exam as saying that he is speaking the truth and the benefit of the doubt is given to him, and he is then oftentimes faced with no charges. The charges are dropped.

Now let us look at what we are talking about today. We are not talking about the criminal world. We are talking about the civilian world. We are talking about lawsuits, we are talking about employment. We are talking about business opportunities and business interests and the public interests.

What are the public interests here? There is a public interest, no question about it, being argued by the committee bill out here today and those who would argue against this amendment. There is a public interest in reducing the possible abuse of the polygraph. We do not want to see it abused, and it can be abused in the sense that an employer would discriminate in its use, or in the sense that somebody who does not know how it is being used, or how

to administer it properly, asks the wrong questions or does not effectively ask the questions at all. No question, a preemployment screening can be abusive, or a screening of any sort under the polygraph.

That interest, though, and how often it occurs has to be weighed against the very strong public interests in many sectors of our society today to be able to screen out people who would be thieves, people who would steal from companies, people who would steal from the public because these companies represent the public interest. And it is when weighing these interests that we get in trouble drawing that line. How do you write a bill like this one that draws that line? I think you can see the difficulty by the number of exceptions that are created in this bill, and the number of exceptions that apparently are going to be seen on amendments that will follow if this one is not adopted, all kinds of concerns over the pharmaceutical industry, for example. The Drug Enforcement Administration says one-half million or a million doses of drugs are stolen every year by employees of pharmacies and wholesale drug manufacturers and distributors. This increases the cost of drugs to consumers.

Imagine the cutback in expenditures for drugs elderly people on fixed incomes could experience if the drug manufacturers could cut back on those theft losses? The National Association of Chain Drugstores estimates consumers pay 10 to 15 percent more for drugs to cover losses from internal theft.

We have had one amendment to this bill in committee dealing with this. We are probably going to have another one on the floor today to allow the opportunity to have polygraph examinations used in connection with pharmaceuticals. That is just one example of where it needs to be.

I understand there may be another one dealing with the armored car deliveries of cash. Frankly, we need to look at the whole area of financial services where we have got problems with money laundering. Where else is the public interest greater in not having thieves than in our banking world today where 80 percent of the internal losses of banks in this country each year are from internal theft; \$382 million last year in losses in banks for that reason, not to mention the vulnerability of the public to money laundering of drug dealings in cash through the process of our financial institutions.

There are a myriad of those. There are no exceptions in this bill for that. I could go on and on and on, as many will do today if this amendment does not pass, and lay out the litany of examples of where we have a public interest in allowing the polygraph to be used, even though there is a competing interest that says maybe we should

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do away with it. We have got to have those exceptions to protect the public.

It seems to me that under the circumstances of this, with the national security interests already excepted, with Government employees in many cases already excepted, with the dual standard being created by this legislation that the logical thing, rather than create this whole long list of exceptions that we otherwise would have to do in this bill, and just let a few people have them, it seems to me that the logical thing to do rather than to create this whole additional laundry list of exceptions where the public interest has to be weighed more heavily in favor of using the polygraph against the other aspects of the public interest involved that we adopt a broad policy statement in this legislation that puts some limits and checks on the users of polygraphs, that requires certification of the persons who are administering them and of the parameters to which the testing may go as far as questions asked and so forth. That is what the Young-Darden amendment does.

The CHAIRMAN. The time of the gentleman from Florida [Mr. McCOLLUM] has expired.

(By unanimous consent, Mr. McCOLLUM was allowed to proceed for 1 additional minute.)

Mr. McCOLLUM. This is the sensible way to approach the abuses in the polygraph given in the private industry of this country, and I urge my colleagues to think about this for a minute. I think when you do, you will realize that rather than riddling this bill full of exceptions hither and yon, the logical thing to do is to pass the comprehensive approach that Young-Darden allows to correct the abuses without killing off the good and necessary part of giving lie detector tests to those in private industry who are employees in very sensitive areas.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Chairman, how can Congress support limited use of the polygraph as a counterespionage tool by the Government and still pass this legislation which severely restricts polygraph use by private employers?

The answer lies in the profound difference in the scope of polygraph examinations, the rights of the individuals subject to the examination, the uses of the test results, and the training and certification of polygraph examiners between the Federal Government counterintelligence and private sector employment polygraphs. Consider the differences:

## SCOPE OF EXAMINATIONS

The Federal counterintelligence examination involves six specific relevant questions concerning contact with hostile intelligence services.

There are no relevant lifestyle questions and the control questions are designed to be nonintrusive. Private employment polygraph exams usually concentrate on honesty and use of drugs and alcohol. The questions are often quite intrusive. Unnecessarily embarrassing questions produce far more false positive than do less intrusive questions. Further, the Federal program involves extensive pretest interviews during which every question to be asked will be reviewed. Not necessarily so in the private sector.

## RIGHTS OF INDIVIDUALS

In the Federal program, individuals who refuse to take the examination are ordinarily reassigned to other, less sensitive work, without loss of pay. There are no such protections in the private sector. Federal civilian and military personnel have the right to counsel outside the examination room, they are reminded of their privilege against self-incrimination, and they are not asked about religion, politics, or personal beliefs, all interviews are recorded and all charts are reviewed by a second or third examiner. The results are never communicated outside a very small group of officials. Virtually none of these protections exist in the private sector.

## USE OF RESULTS

No action can be taken against an individual based solely on the results of a polygraph examination. Deceptive results can lead to further investigation, but, unless the deception is substantiated by external investigation, no adverse action is taken. In the private sector, the charts are often the only determining factor. Frequently, charts are not reviewed by a second examiner. And, unlike the Federal Government where the questions are repeated three times to assure the accuracy of results, often a single response will be considered decisive in the private sector.

## EXAMINER CERTIFICATION AND TRAINING

The Federal Government requires completion of a 14-week training program, including the live administration of 50 exams, and a 6-month internship. States have varying standards. Yet, there are no private-sector training courses which involve the live administration of anywhere near 50 exams. The Federal Government requires a B.A. degree and 2 years of investigative experience. There are no such private-sector requirements.

I am not a big fan of the Federal counterintelligence polygraph program. It is very expensive and the reliability of the polygraph for counterintelligence screening is not supported by any valid research.

Still, a responsible, limited program, when used in conjunction with other security measures, may make sense. Permitting the widespread use of poor quality polygraphs in the private sector to determine the employment future of millions of Americans is nothing short of scandal. The bill before us today corrects that problem.

My State of Colorado has no standards for polygraph givers, so employers may be paying for poor quality, but worse, an employee may be labeled for life by incorrect results.

□ 1750

So what happens is you can have people with no experience go out and make terrible mistakes, and it is the employees who will then pay for the rest of their lives.

So, I think that is why the substitute is majorly flawed. I had tried to figure out how to put an amendment on it, but could not in time. The bill is majorly flawed because it does not deal with the States that have no criteria; and by passing this, it is really giving a feel of congressional approval to the utilization of polygraphs in the private sector, and I think that is a very dangerous thing to do.

I hope the substitute will not pass, because it goes in the wrong direction by not having that very vital protection. The machine is one thing, but the machine is only as good as the person who uses it, and many States have not dealt with that. So to have a Federal mandate that we should start moving down that road is wrong and to say that, well, we are just doing this because the Federal Government could do it is also not accurate because the Federal Government has very stringent standards.

Mr. YOUNG of Florida. Will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman.

Mr. YOUNG of Florida. I thank the gentlewoman for yielding. In the beginning, I thought she was speaking for our substitute. She is correct, that presently there are no standards that exist in the private sector, while they are stringent in the Federal sector.

Mrs. SCHROEDER. I am talking about standards, reclaiming my time, standards for the training of the polygraph examiners.

Now, had the gentleman brought in, say, DOD Directive No. 5210.48, which is the Federal Government's, then we would know what that standard was, but there is not a standard in there. You defer to the States and many States have no standards.

Mr. YOUNG of Florida. If the gentlewoman will yield, on page 6 of our substitute, we provide that a polygraph examiner must be at least 21 years of age, a citizen of the United States, a person of good moral character, in compliance with all laws, rules and regulations of any appropriate State or local government governing use of the polygraph, holds a B.A. degree from an accredited college or university, has successfully completed a formal training course in use of polygraph that has been approved by the Secretary, and has completed a polygraph examiner internship of at least 6 months duration under the direct supervision of a polygraph examiner

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who has met the requirements of this section.

I think we have to have these stringent requirements.

Mrs. SCHROEDER. If the Federal Government is looked at, they have a much more stringent one, and I can point out what that is, it is a 14-week training course, it includes 50 live examinations, a 6-month internship and the administration of anywhere near 50 exams, a B.A. degree, and 2 years of investigative experience.

I think that that is a much stricter standard, and I think if we are going to compare oranges and apples, we should have exactly the same standard that we have in the Federal Government.

Otherwise, I think we have a major loophole that people can get through, and that concerns me.

Mr. YOUNG of Florida. If the gentlewoman will yield, I agree with that. Our standards are not quite as strict as those of the Defense Department, but they are far stricter than any that exist today, because basically throughout the country there are practically no standards at all.

Mrs. SCHROEDER. I think that when we go ahead and say that we are going to do this, we should have it at least at the same level if we are going to say we are doing it in the private sector, because they do it in the Federal sector.

As I say, in the Federal sector, we also have all sorts of other protections such as the rights of individuals; the availability of counsel; and so forth and so on, and it is very well laid out.

That I do not see, and as I say, I will put all of this in the Record; but that I do not see as an equivalent, and I really worry that that could allow some abuse.

Mr. YOUNG of Florida. If the gentlewoman would yield just one more time, I would request respectfully that she read section 4 and 5 of this—

Mrs. SCHROEDER. The gentlewoman has read the section, and that is what I am pointing out.

Mr. YOUNG of Florida. I think you will find that—

Mrs. SCHROEDER. Is that it is not the same. I wish it were the same. It is not the same, and I am saying if we are talking about saying we are doing this because we do it in the Federal sector, then it should be the same. And that is all I am saying.

Mr. YOUNG of Florida. But once again, it is far better than the non-existent protections—

Mrs. SCHROEDER. It is still not the same level of protection that we give to Federal employees, and I think we should make it the same or we cannot use that as an argument.

Mr. SWINDALL. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, as a former practicing attorney and as a private business owner, I rise in support of the Darden-Young substitute, and in opposition to

the committee version for the simple reason that I think today more than any other issue, business men and women in this country are concerned about this continuing attitude in Washington, DC that somehow folks in Washington have better sense than folks back home.

H.R. 1524 is a classic example of that type of mentality, that somehow we have got to continue to set standards out of Washington; in this case completely usurping the right of the private sector to use a polygraph is at least part of a multifaceted process of determining not only qualifications for employment, but also in determining how to best contain theft losses which ultimately benefits the public at large.

What concerns me about 1524 is, it just continues to usurp the same rights that individuals I think repeatedly have stated at least if you go to my district and talk to individuals, that they would be perfectly satisfied if they could just go about the business of running their business with the least amount of interference from Washington, DC.

The substitute that has been offered by Mr. YOUNG and Mr. DARDEN I think addresses the real hearts of the concerns of those individuals who feel that polygraphs have been abused; but it does not go so far as to outlaw that provision; it does set some very rational standards, and even sets forth some remedies that do not exist under current law.

For the reason, Mr. Chairman, I think that we do a tremendous disservice not only for businesspersons in this country, but to consumers who will ultimately bear the cost of this bill in the sense that there will be taken away a very substantive way that individuals can regulate losses in their businesses.

The last point I would make is that no employer under this substitute would be authorized to take any action solely of the basis of a polygraph test.

Mrs. VUCANOVICH. Will the gentleman yield?

Mr. SWINDALL. I yield to the gentlewoman.

Mrs. VUCANOVICH. I would just like to make a point that I did not have a chance to make, again in support of the Young-Darden substitute. Our colleague from Montana [Mr. WILLIAMS] referred to the fact that all of the casinos in my State did not feel this was important, and I did want to make the point that 90 percent of the northern Nevada casinos want to have the ability to use the polygraph, and 70 percent of the southern Nevada casinos support it.

Our colleague also referred to a casino owner, a Mr. Steve Wynn, who has a casino in the southern part of our State, in Las Vegas, and said that the casinos that use polygraph and the casinos that do not, there is no loss difference; and I would like to know how in the world anyone can

measure that. If the money is stolen, how are you going to be able to tell?

So I think the importance is that the private businesses such as casinos who handle money as they do, money loses its name once it leaves your hand; cash does. If we can have the ability in our State and private industry where it is in compliance with our State law, it is a very important tool, and it is obviously not the only tool.

I thank you very much for the time.

Mr. SWINDALL. Two other points that I would like to make very briefly, Mr. Chairman are: First, the inconsistency of H.R. 1524. On the one hand it argues that polygraph tests are somehow invalid and then on the other hand it argues an exemption in a number of categories, mostly relating to the public sector. How can it be invalid in the private sector but yet have validity in the public sector?

The other attitude that bothers me about this bill is this same prevailing attitude that State governments and local governments are incapable of not only noting problems, but solving the problems.

I happen to believe very strongly that our local elected officials are very capable of addressing these problems, and do not need our help.

I will yield to Mr. YOUNG.

Mr. YOUNG of Florida. During the debate of our colleague from Texas [Mr. ANDREWS] he made what I thought was an effective argument against the position that I support.

I want to have an opportunity to respond to that, because I did not want to let it go unanswered.

He made the point that machines are fallible, and I agree with that. God knows the families of the seven crew members of the shuttle *Challenger* know that machines are fallible.

He also said that these machines do not work.

(On request of Mr. YOUNG of Florida and by unanimous consent, Mr. SWINDALL was allowed to proceed for 2 additional minutes.)

Mr. YOUNG of Florida. If the gentleman will yield, in that argument after saying that machines are fallible, he also said that polygraph machines do not work. But at the same time, H.R. 1524, the vehicle that he supports in opposition to our substitute, allows the use of the unworkable machine by the Defense Department, which we support of course.

He is also prepared, as are the sponsors of H.R. 1524, to allow the use of this supposedly unworkable machine for FBI contractors.

□ 1800

They are willing to allow the supposedly unworkable machine in the use of those dealing with drugs. I understand they are also prepared to accept exemptions for public utilities, public security services, armored car personnel, uniformed security personnel, the jewelry business, the legalized

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gaming business, aviation employees, and banks. I understand that they are prepared to allow exemptions for this supposedly unworkable machine for many, many types of industry. I think that is inconsistent. I would like to close this argument by saying that what we are trying to do with the Young-Darden substitute is not only protect against the criminal, but also to protect the innocent who might lose his job if he was not able to have access or if the industry was not able to have access to the use of the polygraph. We believe by having a professional approach to using the polygraph with a legal safeguard for the person being examined that we are protecting the innocent and we are protecting the consumer who pays more than \$40 billion a year now because of internal theft.

I thank the gentleman for yielding.

The CHAIRMAN. The time of the gentleman from Georgia has expired.

(By unanimous consent, Mr. SWINDALL was allowed to proceed for 1 additional minute.)

Mr. SWINDALL. In my own business, I have repeatedly used the polygraph to protect individuals in situations where they are suspect. I, for one, have on numbers of occasions hired former felons and one of their protections is, when an individual accuses them wrongly, they can go to a polygraph examination and vindicate themselves, and they, I know from personal experience, have applauded the use of that to vindicate themselves.

I would certainly hate to see us take away that very valid method of vindication.

Mr. SHELBY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the substitute.

(Mr. SHELBY asked and was given permission to revise and extend his remarks.)

Mr. SHELBY. Mr. Chairman, the substitute seeks to curb polygraph abuse by regulating the testing procedure and licensing polygraph operators. I believe that polygraph tests are basically abusive. H.R. 3916 would only legitimize the Federal Government's approval of what I think is an unscientific subjective procedure that, by its very nature, violates some of the fundamental principles of our Constitution: the presumption of innocence, the right of privacy, and the privilege against self-incrimination that we all have.

Experience by a lot of us, and I have served as a prosecutor and as a U.S. magistrate and as a practicing attorney, experience shows that polygraph licensing and regulatory statutes will not work and do not work. I also believe that the rights provided by H.R. 3916 are meaningless in practice and you have got to ask yourself how voluntary can polygraph examiners really be when H.R. 3916, the substitute, allows employers to require work-

ers and job applicants to take polygraph tests to keep or get their jobs. Does that seem voluntary to you? The requirements for a polygraph license imposed by the substitute are so weak that a polygrapher could obtain a polygraph license without even a high-school education.

But the true purpose of the polygraph is, what? I submit to you, it is basically to intimidate people. Most information obtained from a polygraph interrogation is obtained before the examinee is even hooked up to the polygraph machine because they are so afraid of the machine.

The real way to effectively protect people from the intimidation of the polygraph is, how? It is to ban its use.

The procedure and the machine are flawed, not reliable. We should not play with this kind of thing. Let us protect our constitutional rights.

Mr. Chairman, I yield back the balance of my time.

Mr. STRATTON. Mr. Chairman, I move to strike the requisite number of words.

(Mr. STRATTON asked and was given permission to revise and extend his remarks.)

Mr. STRATTON. Mr. Chairman, I have served some 34 years in naval intelligence, and I think I have experienced some number of individuals who have operated a polygraph and who have carried on polygraph examinations in connection with the principles administered and proposed in the other legislation which exempts the Federal Government employees and defense operations of the Nation but somehow the ideal of utilizing the polygraph in local governments or in businesses is said to be wrong.

The point was made by the gentleman who spoke just a moment ago that if it is so wrong, why is it OK in the other bill? The idea of a polygraph is not that you run everybody through it to see how many people are lying. You use it simply when you have some individual whom you may suspect of some nefarious activity. A polygraph usually ends up at the end of the line when you make a final determination.

I think there is a good deal of misunderstanding that if somebody loses something, you are going to run everybody through the polygraph and try to find out who was guilty and who was not. Why are we objecting to the idea of utilizing it in business? In fact, in recent years, we have seen all kinds of businesses which have been preyed upon. There have been banks that have had individuals taking money out of the banks.

We have had the kind of industrial espionage that has taken place in the case of a couple of companies in Japan coming over here to the United States.

Our business, our whole procedure of keeping American businesses going indicates that there are many opportunities for sabotage, for larceny, all of these other things. In fact, a number of bills and amendments have been of-

fered to protect airlines, to protect utilities. All of these things are subject to sabotage. This is the very kind of a procedure that can work out as effectively as it does in the Government operations in the individual States and communities. This bill is a bill that would encourage States who have not set up any programs for operating this kind of detection to go ahead in this field under appropriate standards.

I think it is this kind of legislation that will help American businesses and will reduce the type of wrongdoing that we have been seeing in the business sector in recent months and recent years.

Mr. Chairman, I yield back the balance of my time.

Mr. THOMAS of Georgia. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Young-Darden substitute and in opposition to the bill.

(Mr. THOMAS of Georgia asked and was given permission to revise and extend his remarks.)

Mr. THOMAS of Georgia. Mr. Chairman, the possibility of polygraph abuse can be a problem, as we have heard in testimony before our committees and as we read in newspaper accounts. We need legislation to address this potential abuse, and I believe that the best approach is contained in the substitute offered Mr. Young and Mr. DARDEN.

This substitute bill has a number of protections for those taking the exams. And it also represents a much more appropriate "federalist" approach to solving this problem.

Historically, States assume the responsibility to regulate and license those who deliver services to their citizens. Utilities are regulated by the States. Insurance companies and real estate brokers are licensed by States, as are doctors, lawyers, dentists, and other professionals. The States assume the duty to protect their citizens and to fine-tune regulations to cover their particular needs and circumstances.

Polygraph examiners fit into this same category of professionals offering services to businesses and individuals. At least 30 States have passed legislation to regulate the polygraph industry by licensing examiners and setting standards for exams.

The States' right to govern themselves should be respected. State legislators are working to develop legislation which protects the rights of examinees, establishes training guidelines for examiners, and restricts the kinds of questions that can be asked so the personal lives of examinees are not invaded.

The Young-Darden substitute would encourage other States to follow suit and would set up clear guidelines for States to institute the kinds of protections that examinees need. It seems to me that this approach is much more responsible than the committee bill

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blanket prohibition against polygraph use in the private sector.

The polygraph has been used for decades by businesses that have particular security problems. Many of these businesses are likely to get exemptions from the committee bill so they can continue to use the exams. That means that tens of thousands of employees and job applicants would continue to be subject to potential abuses.

The committee bill simply won't work in the real world. The polygraph will continue to be used, and instances of polygraph abuse could continue unless we do something. Prohibition is not the answer. What will work is legislation that is carefully drafted and which recognizes the practical needs of American business and that is sensitive to the potential harm that can be done to examinees by improperly trained testers or others who abuse test results.

I believe that the States are best able to consider all of these needs and to find the balance that works best for their citizens. The States should have the authority to pass their own bills, using the guidelines set out in the substitute bill.

I urge my colleagues to support the Young-Darden substitute as the most sensitive and responsible solution to instances of polygraph abuse.

□ 1810

Mr. ROBINSON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the substitute.

(Mr. ROBINSON asked and was given permission to revise and extend his remarks.)

Mr. ROBINSON. Mr. Chairman, I will make my remarks very brief. I have listened to the arguments on both sides, and both sides have made very valid points.

However, I would like to briefly digress and talk about my experiences with the polygraph starting back in 1963, when I entered law enforcement as a rookie police officer trying to obtain a college degree and work during the daytime and go to school at night.

I had to take a polygraph test once as a condition for employment in law enforcement. The examiner that administered the test to me was a very cantankerous gentleman who was in a big hurry that afternoon to hurry up and finish his screening process of all of us young potential rookie cops. He came out and told me after my test that I had failed.

He said, "I asked you one question on this test," and he said, "You lied."

I said, "What was the question? I don't think I lied."

He said, "I asked you a question: Have you ever done anything in your life that, if we found out about it, might be embarrassing to you or this department?"

Of course, I said, "No." I never stole anything. I never did anything that I thought was real terrible. But I guess in my subconscious, I remembered I borrowed a marble when I was 5 years old, and didn't return it.

He said, "That's what it was. You stole a marble when you were 5 years old, so you flunked. You are not going to get the job as a State trooper."

I said, "That is absolutely ridiculous. I want to see the next person in charge." I went to see the next superior officer, and he said it was ridiculous.

The point I am making is the polygraph is only as good as the examiner and the questions and the way they are predicated. I have no problems with some of the exemptions in this bill. I voted for the bill to allow the Defense Department to give polygraphs. It is a very useful investigative tool.

My fear is that we are going to put the congressional stamp of approval on polygraphing every person who applies for a job in any business in this country as a precondition to employment. I think we have a responsibility to the workers in the country, as well as to our businesses and to our Government. For that reason, I oppose the substitute and I urge passage of the bill.

Mr. WILLIAMS. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the substitute, which is a good-faith attempt and has been well presented by its sponsors and cosponsors.

The chairman of the subcommittee, the gentleman from California, mentioned that we have a Congressional Budget Office estimate that this substitute would cost the Federal Government \$1 to \$2 million in administrative costs. Let me read to you from the Congressional Budget Office letter:

The bill would increase the workload of the Department of Labor, and so result in increased costs for that agency. H.R. 3916 requires all persons conducting polygraph examinations to be certified by the Secretary of Labor, and requires the Secretary to make continuing evaluations of certifications. Should a certification be withdrawn, appeals may be brought in the District Court. In lieu of this process, the Secretary is responsible for certifying administrative plans of state and local governments. In addition to these duties, the Secretary must issue rules and regulations necessary to implement the act, make necessary inspections and investigations, prepare and print notices to be posted upon the premises of every employer involved in interstate commerce, and approve training and continuing education classes necessary for examiners to receive and maintain certification.

Based on information from several states that license polygraph examiners, we estimate that the additional costs to the federal government as a result of this bill would be between \$1 million and \$2 million annually.

The question is, does the Congress of the United States want to spend another \$2 million to encourage the use of lie detector gadgets in this country?

That is what this bill will do, because we have found that every State that has passed regulations over lie detectors has ended up with an explosion of use, because people have become snookered into believing that the lie detector works because the stamp of approval of the Government has been put on it.

As a side matter, one of the other gentlemen in the debate mentioned two recent spies, both tragic cases, but let me bring them up again, the cases of Mr. Walker and Mr. Chin. They were apparently, and convicted of being, spies against this country.

What the proponents of this substitute, which I oppose, did not tell you was that Mr. Walker and Mr. Chin took and passed the lie detector test that was given to them. What they also did not tell you is Mr. Walker used to be a lie detector examiner. He used to give the tests.

Finally, we need to look at this, and we need to look at it in a dispassionate manner: Do these things work? Are they reliable?

A polygraph instrument cannot detect truth or deceit. It can detect increases in blood pressure. It can detect increase respiration. It can detect increased perspiration. But it cannot detect lies. It cannot find the truth. It detects something, but it does not detect lies because there is no uniform physiological response for all liars. That is primarily why this gadget does not work.

The human is a complex instrument. It is a system of thought processes and behavioral processes and intellectual processes, all woven together in a way that man does not understand.

The lie detector people would tell you that that gadget is able to pierce that human intellect and discover what is going on inside of it, whether the brain is lying or telling the truth. People are not psychologically transparent.

Business has been snookered by the lie detector industry. Business is getting the business from the polygraph industry. The lie detector assumes that Pinocchio is not a myth, that when we lie you can see it. Our nose will grow. We will sweat a certain amount more. Our respiration will rise. The lie detector gadget, my friends, does not work.

Perhaps America would be better off if it did, but it does not.

Mr. Chairman, I urge my colleagues to oppose the substitute.

□ 1820

Mr. YOUNG of Florida. Mr. Chairman, I rise in opposition to H.R. 1524 and to close the debate for the proponents of the amendment in the nature of a substitute.

The CHAIRMAN. Without objection, the gentleman from Florida [Mr. YOUNG] is recognized for 5 minutes.

There was no objection.



Mr. YOUNG of Florida. Mr. Chairman, I thank my colleagues for the generosity of their time this afternoon. I just want to respond to a couple of points, as those of us who support the substitute close the debate.

The chairman of the committee presenting the bill makes the point that CBO has said our substitute will cost from \$1 to \$2 million to administer. That is nothing compared to the administrative cost of most bills that this House considers. But when you compare it to the nearly \$40 billion a year that our Nation's businesses are losing from internal theft and that we are trying to prevent by a professional approach to the polygraph, the \$1 to \$2 million is a great investment.

The gentleman also suggested that this machine is not any good and that it cannot determine the truth. He says all it does is measure temperature and perspiration and heart rate. If that is the case, why is he willing to make it available for certain segments of our Government and, certain segments of our private industry, but not others. I find something very, very inconsistent in that argument. If it is good for one industry, it is good for another. I think that argument is very, very flawed and very, very inconsistent.

Mr. Chairman, I yield to my colleague, the gentleman from Georgia [Mr. DARDEN], to close the debate on this amendment.

Mr. DARDEN. I thank the gentleman for yielding and I want to join my colleague in expressing my clear surprise at the sponsor of the bill and the distinguished chairman of the committee who complains about spending \$1 million to save \$50 billion, \$50 billion which is stolen from the businessmen of America by dishonest employees.

I think we can spend and ought to spend \$1 million or \$2 million or \$10 million to assure that we do not continue to permit this type of theft because, Mr. Chairman, here is what happens when we have \$50 billion stolen from the private sector: The cost goes up.

Who ends up paying for it? The taxpayer, the consumer.

Mr. Chairman, it is estimated that, as a result of employee theft in this country, the cost of goods at retail is 10 to 15 percent more than what it would be did not employee dishonesty occur.

So I think \$1 million is a small price to pay, Mr. Chairman, in return for taking all precautions that we can take against dishonest employees.

I would also point out, Mr. Chairman, that in this day of a litigation-conscious society, employers are constantly being sued and brought to court and being held accountable for not properly screening, not properly seeing that the persons they hire have matters in their backgrounds which are objectionable; for example, the

employee working for the telephone company who might rape a customer, or something, while making a service call.

So, in many instances, we are being asked and employers are being held more and more accountable to the general public for a closer scrutiny of their employees.

But let me finally say, Mr. Chairman, in conclusion, that the substitute ought to pass, and the reason it ought to be is that we should not have one standard for the private sector and another standard for the public sector. It is time to put this hypocrisy to rest.

And remember that on the motion of my colleague from Florida, in June 1985 this House approved polygraph use by the Department of Defense, by a vote of 333 to 71.

H.R. 1524 would take away from private industry an investigative tool which the Congress has deemed appropriate and necessary for use by the Federal Government. If it is good enough for the Federal Government, it is good enough for the businessmen of America.

I urge the adoption of the substitute.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. YOUNG].

The question was taken; and the Chairman announced that he was in doubt.

RECORDED VOTE

Mr. DARDEN, Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 173, noes 241, not voting 20, as follows:

[Roll No. 45]

AYES—173

Anderson	DeWine	Jenkins
Archer	Dickinson	Jones (NC)
Arney	DioGuardi	Jones (TN)
Badham	Dowdy	Kindness
Barnard	Dreier	Kolbe
Bartlett	Duncan	Kramer
Barton	Eckert (NY)	Lagomarsino
Bateman	Emerson	Leath (TX)
Bennett	Fawell	Lent
Bentley	Fiedler	Lewis (CA)
Bereuter	Fields	Lewis (FL)
Bevill	Fish	Lightfoot
Bilirakis	Flippo	Livingston
Bliley	Fowler	Lloyd
Boulter	Franklin	Lott
Broomfield	Frenzel	Lowery (CA)
Brown (CO)	Frost	Lujan
Broyhill	Fuqua	Lungren
Byron	Gekas	Mack
Callahan	Gingrich	MacKay
Carney	Goodling	Madigan
Chandler	Gradison	Marlenee
Chapman	Hall (OH)	Martin (NY)
Chappell	Hammerschmidt	McCain
Chappie	Hansen	McCandless
Cheney	Hartnett	McCollum
Cobey	Hefner	McEwen
Coble	Hendon	McGrath
Coleman (MO)	Henry	McKernan
Combust	Hiler	McMillan
Craig	Hillis	Michel
Crane	Holt	Miller (OH)
Daniel	Hopkins	Molinarì
Dannemeyer	Huckaby	Monson
Darden	Hunter	Montgomery
Daub	Hutto	Moore
DeLay	Hyde	Moorhead
Derrick	Ireland	Morrison (WA)

Myers	Sensenbrenner	Stump
Nelson	Shaw	Sundquist
Nichols	Shumway	Sweeney
Oxley	Shuster	Swindall
Packard	Siljander	Tallon
Parris	Sisisky	Tauzin
Petri	Skeen	Thomas (CA)
Pickle	Slaughter	Thomas (GA)
Porter	Smith (NE)	Valentine
Ray	Smith, Denny	Vander Jagt
Regula	(OR)	Vucanovich
Roberts	Smith, Robert	Walker
Roemer	(NH)	Whitehurst
Rogers	Smith, Robert	Whitley
Rose	(OR)	Whittaker
Roth	Snyder	Whitten
Roukema	Solomon	Wolf
Rowland (GA)	Spence	Wortley
Schaefer	Spratt	Wylie
Schuette	Stenholm	Young (FL)
Schulze	Stratton	

NOES—241

Ackerman	Gallo	Murtha
Akaka	Garcia	Natcher
Alexander	Gaydos	Neal
Andrews	Gejdenson	Nielson
Annunzio	Gibbons	Nowak
Anthony	Gilman	O'Brien
Applegate	Glickman	Oakar
Atkins	Gonzalez	Oberstar
AuCoin	Gordon	Obey
Barnes	Gray (IL)	Ohl
Bates	Gray (PA)	Ortiz
Bedell	Green	Owens
Beilenson	Gregg	Panetta
Berman	Guarini	Pashayan
Biaggi	Gunderson	Pease
Boehrlert	Hamilton	Penny
Boggs	Hawkins	Pepper
Boland	Hayes	Perkins
Boner (TN)	Heftel	Price
Bonior (MD)	Hertel	Pursell
Bonker	Horton	Quillen
Borski	Howard	Rahall
Bosco	Hoyer	Rangel
Boucher	Hubbard	Reid
Boxer	Hughes	Richardson
Breaux	Jacobs	Ridge
Brooks	Jeffords	Rinaldo
Bruce	Johnson	Ritter
Bryant	Jones (OK)	Robinson
Burton (CA)	Kanjorski	Rodino
Burton (IN)	Kaptur	Roe
Bustamante	Kasich	Rostenkowski
Carper	Kastenmeier	Rowland (CT)
Carr	Kemp	Roybal
Clay	Kennelly	Russo
Clinger	Kildee	Sabo
Coats	Kleczka	Savage
Coelho	Kolter	Saxton
Coleman (TX)	Kostmayer	Scheuer
Conte	LaFalce	Schneider
Conyers	Lantos	Schroeder
Cooper	Leach (IA)	Schumer
Coughlin	Lehman (CA)	Seiberling
Courter	Lehman (FL)	Sharp
Coyne	Leland	Shelby
Crockett	Levin (MI)	Sikorski
Daschle	Levine (CA)	Skelton
Davis	Lipinski	Slattery
de la Garza	Long	Smith (FL)
Dellums	Lowry (WA)	Smith (IA)
Dicks	Luken	Smith (NJ)
Dingell	Lundine	Snowe
Dixon	Manton	Solarz
Donnelly	Markey	St Germain
Dorgan (ND)	Martin (IL)	Staggers
Downey	Martinez	Stallings
Durbin	Matsui	Stangeland
Dwyer	Mavroules	Stokes
Dyson	Mazzoli	Strang
Early	McCloskey	Studds
Eckart (OH)	McDade	Swift
Edgar	McHugh	Synar
Edwards (CA)	McKinney	Tauke
Edwards (OK)	Meyers	Torres
English	Mica	Torricelli
Erdreich	Mikulski	Towns
Evans (IL)	Miller (CA)	Traficant
Fascell	Miller (WA)	Udall
Fazio	Mineta	Vento
Feighan	Mitchell	Viscosky
Florio	Moakley	Volkmer
Foglietta	Mollohan	Walgren
Foley	Moody	Watkins
Ford (MI)	Morrison (CT)	Waxman
Ford (TN)	Mrazek	Weber
Frank	Murphy	Weiss

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Wheat	Wolbe	Young (AK)
Williams	Wright	Young (MO)
Wilson	Wyden	Zschau
Wirth	Yates	
Wise	Yatron	

## NOT VOTING—20

Addabbo	Evans (IA)	McCurdy
Aspin	Gephardt	Rudd
Brown (CA)	Grotberg	Stark
Campbell	Hall, Ralph	Taylor
Collins	Hatcher	Traxler
Dornan (CA)	Latta	Weaver
Dymally	Loeffler	

□ 1835

Mr. SAXTON changed his vote from "aye" to "no."

Mr. BARTON of Texas and Mr. CRANE changed their votes from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

□ 1845

The CHAIRMAN. The Clerk will designate section 2.

The text of section 2 is as follows:

## SEC. 2. PROHIBITIONS OF LIE DETECTOR USE.

It shall be unlawful for any employer engaged in commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of himself or others, of any right afforded by this Act.

Mr. JEFFORDS. Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Vermont?

There was no objection.

The text of the remainder of the bill, beginning with section 3, is as follows:

## SEC. 3. NOTICE OF PROTECTION.

The Secretary of Labor shall prepare, have printed, and distribute a notice that employers are prohibited by this Act from using a lie detector test on any employee or prospective employee. Upon receipt by the employer, such notice shall be posted at all times in conspicuous places upon the premises of every employer engaged in commerce or in the production of goods for commerce.

## SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

(a) IN GENERAL.—The Secretary of Labor shall—

(1) issue such rules and regulations as may be necessary or appropriate for carrying out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50).

## SEC. 5. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—(1) Subject to paragraph (2), whoever violates this Act may be assessed a civil penalty of not more than \$10,000.

(2) In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—(1) An employer who violates the provisions of this Act shall be liable to the employee or prospective employee affected by such violation. An employer who violates the provisions of this Act shall be liable for such legal or equitable relief as may be appropriate, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional amount as liquidated damages.

(2) An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) The court shall award to a prevailing plaintiff in any action under this subsection the reasonable costs of such action, including attorneys' fees.

## SEC. 6. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) COUNTERINTELLIGENCE PROGRAM EXEMPTION.—(1) Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test that is conducted pursuant to section 1221 of the Department of Defense Authorization Act, 1986.

(2) Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterin-

telligence functions, of any lie detector test—

(A) to an individual assigned or detailed to the Central Intelligence Agency or to any expert or consultant under a contract with the Central Intelligence Agency;

(B) to (i) an individual employed by or assigned or detailed to the National Security Agency, (ii) an expert or consultant under contract to the National Security Agency, (iii) an employee of a contractor of the National Security Agency, or (iv) an individual applying for a position in the National Security Agency; or

(C) to an individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the Central Intelligence Agency or the National Security Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) EXEMPTION FOR DRUG THEFT OR DIVERSION INVESTIGATIONS.—This Act shall not prohibit the use of a lie detector test on current employees by an employer investigating a reported theft or diversion of a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812) to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement,

that explicitly or implicitly limits or prohibits the use of lie detector tests on such employees; and

(2) the test is administered only to employees with direct access to such controlled substances.

## SEC. 7. DEFINITIONS.

As used in this Act—

(1) The term "lie detector test" includes any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) which is used, or the result of which are used, for the purpose of detecting deception or verifying the truth of statements.

(2) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act (29 U.S.C. 203(b)).

## SEC. 8. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of enactment, except for section 3, which shall take effect six months after the date of enactment of this Act.

## AMENDMENT OFFERED BY MR. WILLIAMS

Mr. WILLIAMS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WILLIAMS: Page 6, beginning on line 20, strike out all of subsection (b) through page 7, line 17, and insert in lieu thereof the following:

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—(1) Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any

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employee of any contractor of such department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such department or any employee of any contractor of such department in connection with such activities.

(2) Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptographic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

Mr. WILLIAMS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. WILLIAMS. Mr. Chairman, the amendment I am offering today has been reviewed by the other side. I understand there are no objections. It has been developed in discussions with the Department of Defense, the Department of Energy, and the Central Intelligence Agency and has their full support.

I am including in the RECORD letters from them to Chairman HAWKINS for the RECORD confirming their support. The amendment has been reviewed and agreed to by the Armed Services Committee of the House as well as by my friends in minority.

The letters are as follows:

THE UNDER SECRETARY OF DEFENSE,  
Washington, DC., December 11, 1985,

In reply refer to: I-18837/85.

Hon. AUGUSTUS F. HAWKINS,  
Chairman, Committee on Education and Labor, Washington, DC.

DEAR MR. CHAIRMAN: Reference is made to your letter of December 4, 1985 in which you offer amendment language to House Resolution 1524.

We do indeed support the language of the amendment and interpose no objection to the Bill so long as agencies of the Federal government and persons contracting with the government are exempt from its provisions.

Sincerely,

FRED C. IKLE.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
Washington, DC., December 12, 1985.

Hon. PAT WILLIAMS,  
House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR PAT: I understand that H.R. 1524, the Employee Polygraph Protection Act of 1985, will soon be considered by the House.

This is to advise you that the Committee on Armed Services is supportive of the amendment you propose to offer to section 6(b) of the bill. That amendment would exempt consultants or employees of contractors of the Department of Defense from the provisions of the bill. We believe it is necessary that the bill provide a specific exemption for employees of contractors of the Department of Defense and for consultants of the department.

Sincerely,

LES ASPIN, Chairman.

CENTRAL INTELLIGENCE AGENCY,  
Washington, DC, December 11, 1985.  
Hon. AUGUSTUS F. HAWKINS,  
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to respond on behalf of the Central Intelligence Agency to your letter of December 4, 1985 concerning H.R. 1524.

The Agency's concern with this legislation has been the sufficiency of the exemption for employees of Agency contractors. We have reviewed the "Amendment in the Nature of a Substitute to Section 6(b) in H.R. 1524" which was enclosed with your letter. Assuming that this amendment were to be adopted, the Agency's concern would be alleviated and the Agency would have no objection to this legislation. Other agencies, however, may seek amendments to the exemption provisions to insure that polygraph examinations are not precluded for contractors and consultants employed by the Federal Government and having access to classified information.

Thank you for the opportunity to comment on this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

CHARLES A. BRIGGS,  
Director, Office of Legislative Liaison.

Mr. WILLIAMS. Mr. Chairman, this amendment is technical in nature. It simply consolidates language relating to the decision of the House earlier a few months ago to grant the use of lie detectors to some agencies of the Federal Government.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I am happy to support the gentleman's amendment. We have read it and this side supports the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana [Mr. WILLIAMS].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WILLIAMS  
Mr. WILLIAMS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WILLIAMS: Page 2, line 5, strike out "of 1985".

Page 3, line 14, strike out "bais" and insert in lieu thereof "basis".

Mr. WILLIAMS. Mr. Chairman, this amendment is very technical in nature, simply changing the date to make it conform with this year and also correcting a typographical error, a misspelling.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I thank the gentleman for yielding, and just to say that the minority has reviewed the amendment and has no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana [Mr. WILLIAMS].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. JEFFORDS

Mr. JEFFORDS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JEFFORDS: Page 9, strike out lines 8 through 11 and insert in lieu thereof the following:

SEC. 8. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of the enactment of this Act.

Mr. JEFFORDS. Mr. Chairman, this amendment merely makes the effective date 6 months after enactment instead of upon enactment, to give the industry time to adjust to the new law and allow the Secretary of Labor to promulgate such notices as he may deem appropriate.

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from California.

Mr. MARTINEZ. Mr. Chairman, the committee has reviewed the amendment and has no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont [Mr. JEFFORDS].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ECKART OF OHIO

Mr. ECKART of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKART of Ohio: Page 8, strike out lines 1 through 15 and insert in lieu thereof the following:

(d) EXEMPTION FOR DRUG SECURITY, DRUG THEFT, OR DRUG DIVERSION INVESTIGATIONS.—This Act shall not prohibit the use of a lie detector test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812) to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement,

that explicitly or implicitly limits or prohibits the use of lie detector tests by any such employer;

(2) the test is administered only to an employee who has, or prospective employee who would have, direct access to any such controlled substance; and

(3) the results of an analysis of lie detector charts are not used as the sole basis upon which any employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

Mr. ECKART of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be

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considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

□ 1900

Mr. ECKART of Ohio. Mr. Chairman, when this legislation came before the Education and Labor Committee last fall, I was successful in including language which provides a specific exemption for the pharmaceutical industry with respect to its handling of controlled substances. My committee amendment allows those employers in the industry to polygraph employees who have direct access to controlled substances as part of a broader investigation into a theft or diversion of such drugs.

The amendment I am offering today would alter the committee-approved language in two ways: No. 1, the exemption would be slightly expanded to allow for the preemployment screening of prospective employees who would have direct access to these substances during the course of their employment. No. 2, the amendment explicitly prohibits that the results of the test be used as the sole basis for hiring or firing an employee.

During consideration of my amendment in committee, concern was expressed that by only allowing the testing of employees during an investigation, rather than before he or she is hired, is synonymous with closing the barn door after the horse has escaped. While I have serious reservations regarding the accuracy of this instrument, reservations that are supported by a number of studies which question the scientific validity of the polygraph, I am offering this exemption because of my concerns with the epidemic of drug abuse in this nation.

Yet, because of the questionable accuracy of the lie detector, especially with regard to preemployment testing, my amendment protects employees by requiring that the evidence from the test must be supported by additional information before punitive action can be taken against that employee or prospective employee.

Mr. Chairman, I urge support for my amendment. The full committee, in approving my earlier language, agreed with my premise that we must extend every legal tool available to the pharmaceutical industry to assist in combating the theft of dangerous drugs. I firmly believe that it is in our interest to do all that we can to halt the illegal trafficking and selling of drugs. I hope that my colleagues will support this amendment.

AMENDMENT OFFERED BY MR. ARMEY TO THE AMENDMENT OFFERED BY MR. ECKART OF OHIO

Mr. ARMEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. ARMEY to the amendment offered by Mr. ECKART of Ohio: Page 1, strike out lines 14 through 16 and insert in lieu thereof the following:

(2) the test is administered only to an employee who has, or prospective employees who would have, access to the manufacture, storage, distribution, or sale of any such controlled substance; and

Mr. ARMEY. Mr. Chairman, I offer this amendment somewhat reluctantly because I do support the thrust of the Eckart amendment.

When this bill was before our full committee, I offered an amendment to exempt the drug industry from the demand for polygraphs, and my amendment was amended by the gentleman from Ohio to limit preemployment testing and to limit testing to those employees who have direct access to controlled substances.

Given the nature and extent of our drug problem and the lengths that some will go to obtain drugs, I felt this was unwise. This particular exemption for the drug industry was adopted by the committee, and I am very pleased that the gentleman from Ohio [Mr. ECKART] proposes now to add that preemployment testing. I am concerned, however, with the limitation on testing for those who have only "direct access to controlled substances."

It is not hard to imagine a number of scenarios whereby employees who are far removed from the direct handling of drugs can be very directly involved in stealing them. This, Mr. Chairman, is what my amendment addresses. It is not difficult, for example, to understand the extent to which people will go, the lengths they will go to obtain these drugs illegally and then, of course, to move them on the street and access them to our youngsters.

Obviously, business already does a good deal to create procedures for handling of the drugs that would give us some sense of security, and anybody who would try to bypass these procedures would find themselves with some difficulty, especially when you realize that the recording of the transactions and the recording of the manifests are kept separate from that person who actually physically moves the drugs. It turns out in all too many cases that if an individual is driving the truck, for example, and wishes to move the drugs or remove them, that they would be faced with the fact that there is a paper trail, a record on the movement of these drugs, and for him to be able to get away with that, it would be necessary to have that record altered. We have documented cases where the theft was only made possible by the fact that the individual was able to conspire with somebody, perhaps a computer operator or a billing clerk that was able at the same time the drugs were removed to alter the record. So indeed they could not be traced through this paper trail.

The long and the short of my amendment is that we have got to be

able to use this instrument of investigation to detect the entire trail of these drugs, and to be able to have some assurance that we can investigate at any juncture where, indeed, an infraction of the security of the drugs may take place and become available to our youngsters in the future.

Mr. ECKART of Ohio. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I am happy to yield to the gentleman from Ohio.

Mr. ECKART of Ohio. I have two short questions if my friend would. We list the schedules, I, II, III, and IV. There are similar schedules. When the gentleman uses the word "controlled substances," I assume he refers to the section 202 common list of controlled substances?

Mr. ARMEY. Yes, I do.

Mr. ECKART of Ohio. The second question I would have would focus on the word "access." My concern would be the cashier, the clerk, someone who would not be in the manufacture, storage, distribution. Can we get some agreement to insert the word "direct" before the word "access," to try to narrow the focus?

Mr. ARMEY. I share the gentleman's concern and he is absolutely right about somebody employed in the business that has no access whatsoever. I am concerned about the record-keeping, and the gentleman understands that problem.

Mr. ECKART of Ohio. If the gentleman would put the word "direct" in there, then I will be happy to accept the amendment.

Mr. ARMEY. I see the gentleman's point, given the manufacture, storage, and distribution, and then we would have covered all of the bases that we feel need to be, without spilling over into areas that are not in need.

Mr. ECKART of Ohio. If the gentleman would ask unanimous consent to include that word, we would be happy to accept the amendment under the circumstances.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, in the instance of a computer operator who is filling in the location and the amounts of these code A drugs, is that computer operator considered to have direct access to those drugs under the gentleman's amendment?

□ 1910

Mr. ARMEY. Well, I would consider that a direct portion of the distribution process. In other words, if you talk to people in this industry who, of course, feel this responsibility of moving these, one of the components of their plan for security is to keep that paper trail so that we can know, in effect, who they are checked out to and what inventory was left, which location and so on.

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The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ECKART of Ohio, and by unanimous consent, Mr. ARMEY was allowed to proceed for 2 additional minutes.)

Mr. ARMEY. I would be concerned that anybody who would be able to have the responsibility to keep the record of the movement of these materials, whether they are entering the record or perhaps on the other end, would have an opportunity to alter that record and thereby cover the, more or less cover the tracks of the person who physically removed them.

I share the concern of the gentleman from Ohio. We do not want this to spill over to janitors or other people.

Mr. WILLIAMS. If the gentleman will yield, do I understand that the gentleman has willingly accepted the word "direct" to be placed before the word "access" in his amendment?

Mr. ARMEY. I believe if we put the word "direct" in there, given our understanding of what we mean by distribution; I expect perhaps to hear some legislative record of that understanding, we would probably all find ourselves quite satisfied.

Mr. WILLIAMS. If the gentleman will yield, I would say to the subcommittee chairman and to my friend from Ohio, that the sponsor of the legislation would accept the amendment.

Mr. ECKART of Ohio. Mr. Chairman, I ask unanimous-consent that the amendment offered by the gentleman from Texas [Mr. ARMEY] be modified after the word "have," and after the comma to insert the word "direct".

The CHAIRMAN. Is there objection to the unanimous consent request of the gentleman from Ohio?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. ARMEY to the amendment offered by Mr. ECKART of Ohio: Page 1, strike out lines 14 through 16 and insert in lieu thereof:

(2) the test is administered only to an employee who has, or prospective employee who would have, direct access to the manufacture, storage, distribution, or sale of any such controlled substances; and

Mr. ECKART of Ohio. Mr. Chairman, we are delighted to accept the modification, and appreciate the gentleman's expression of concern on this question.

Mr. ARMEY. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. ARMEY], as modified, to the amendment offered by the gentleman from Ohio [Mr. ECKART].

The amendment, as modified, to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. ECKART], as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MRS. ROUKEMA

Mrs. ROUKEMA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. ROUKEMA: Page 8, after line 15, insert the following new subsection:

(e) EXEMPTION FOR SECURITY SERVICES.— (1) Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test by a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement, which limit or prohibit the use of lie detector tests on such employees.

(3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion; or

(B) the test is administered to an employee or prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

Mrs. ROUKEMA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Chairman, I join Congressman Biaggi in offering an amendment which would exempt from the bill's coverage firms whose primary business is to furnish protective security services when they are engaged in the protection of sensitive facilities and valuable items and documents. The Roukema-Biaggi amendment includes armored car, uniformed and plainclothes guards, and security alarm companies. It would allow polygraphs to be administered for the protection of such facilities as nuclear

powerplants, public water supply, and public transportation.

First, I would like to commend my colleague on the Education and Labor Committee, Mr. Biaggi, a cosponsor of H.R. 1524, who recognized the need for this exemption during the committee's deliberations. The gentleman from New York has played a crucial role in the development of this amendment and I am pleased to have him join me in offering it.

In addition, I appreciate the cooperative spirit of the sponsor of H.R. 1524, Mr. Williams, who recognizes the need for flexibility in the protective security area. Despite our philosophical differences over the need for H.R. 1524, it is indeed reassuring that we have been able to cast aside those differences to fashion an amendment which allows flexibility while still containing necessary safeguards for the employees.

Even if you believe there is a need for this bill's prohibitions, you must realize that there are certain interests which are so sensitive to both the employer and the society at large that we must provide some additional leeway to that employer. The bill already recognizes a need to accommodate certain sensitive concerns by exempting governmental employees and contractors to the CIA, FBI, and the National Security Agency. But our national security goes well beyond the operations of the Federal Government and is affected by strictly private-sector functions such as the transportation of currency and the operation of certain facilities, such as airports. The threat of terrorism alone warrants our permitting additional flexibility in establishing security measures in these areas.

The need for my amendment is underscored by a recent survey showing that 65 percent of the total losses in the armored car industry are a result of internal theft. To give an idea of what this means in dollars, that industry transports, counts, and stores over \$15 billion a day. In addition, employees in the protective security industry frequently are required to carry guns, which is almost always the case with armored car drivers. As custodians of a customer's money and protector of his interests, the industry has an obligation to do everything in its power to attempt to recruit and hire employees whose honesty and integrity is beyond question.

The vulnerability of the security industry was illustrated by an incident which recently occurred in Connecticut, where preemployment polygraphing is outlawed. The FBI arrested members of the Puerto Rican terrorist organization—the Macheros—and charged them with an \$8 million robbery by planting a member of their group as a Wells Fargo armored car driver. The money has since been traced to Cuba where it is now beyond recovery.



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Since the guard in this case had no prior criminal record, the only way of detecting his motives for applying would have been through the use of the polygraph. Indeed, as was learned from testimony received from a representative of the industry, applicants with illegitimate motives are usually deterred from even applying by the mere existence of the polygraph.

As I have mentioned, the bill itself recognizes that there can be instances where the use of polygraphs is appropriate. Indeed, the House as a whole recognized this necessity when it overwhelmingly, (333 to 71), adopted an amendment to the defense authorization bill requiring the use of polygraphs for counterintelligence purposes.

My amendment simply expands upon this by recognizing that, regardless of any doubts one has regarding the use of polygraphs, there are certain situations where life and property are so extremely vulnerable that we must permit companies to take reasonable precautions. When these situations include such activities as the guarding of nuclear facilities and the transporting of millions of dollars, the utmost caution is essential.

To address concerns that the exemption would be so broad as to cover low-priority security functions, my amendment contains an important limitation. It only allows polygraphs to be administered to employees engaged in the protection of currency, negotiable securities, precious commodities or instruments, proprietary information, or facilities, materials, or operations having a significant impact on our national security or the health or safety of a State or locality. The definition of such facilities would be provided by the Secretary of Labor through regulations issued within 60 days after enactment.

In further defining these interests through regulations, I emphasize that the language in the amendment is designed to be inclusive and broadly construed. Therefore, we do not expect the Secretary in his regulations to limit the exemption to just those facilities listed in the amendment. In addition the definition of "proprietary information" shall include documents which are essential for the functioning of a business.

Finally, my amendment contains a necessary safeguard to ensure that innocent individuals are not injured through the use of a polygraph. It would prohibit exempted employers from denying employment, firing, or taking any other employment action solely on the basis of the results of the polygraph. In the committee's hearings we received testimony from the protective security industry and others indicating that this is the standard practice for employers who use polygraphs in a responsible manner.

We must not forget that, ultimately, it is the average citizen who relies on the dependability and integrity of the

protective security industry. Let's make sure they have the resources to live up to those expectations.

Mr. Chairman, this is a commonsense approach to the use of the polygraph.

Mr. HILER. Will the gentleman yield?

Mrs. ROUKEMA. I yield to the gentleman.

Mr. HILER. I would ask the gentlewoman, her amendment seems reasonable, but I wonder is the polygraph more accurate when it deals with Brinks car operators than it is when it deals with people in manufacturing or people that are tellers in banks?

Mrs. ROUKEMA. No. I would agree with the point that the gentleman is making, and indeed I have opposed this legislation for precisely that reason.

However, it is important to understand that this amendment is an improvement and it also makes the point that there are reasonable exceptions.

Mr. HILER. Yes.

If the gentlewoman will yield further, I am astonished that the authors of this bill are accepting exemptions. If a polygraph does not work for manufacturing enterprises in the United States, I am not sure why it works for national security or why it works for guarding nuclear facilities or anything else. I am just bewildered that the authors of the bill are accepting all these amendments.

Mr. WILLIAMS. Will the gentleman yield?

Mrs. ROUKEMA. I yield to the gentleman.

Mr. WILLIAMS. I thank the gentlewoman for yielding, and inasmuch as the gentleman has in effect asked a question of the author of the legislation and I am the author, let me say that the reason we are willing to accept this amendment is because it is very necessary, in the judgment of the sponsor of the amendment as it is to the sponsor of the legislation, to establish symmetry between what we allow in the public sector in the way of polygraphing and what we allow in the private sector.

The gentlewoman is correct. Security guards who guard our nuclear powerplants, our hydroelectric facilities, our huge shipments of code A drugs, our negotiable securities are guarding the health and safety of America, and we allow them to be polygraphed.

We think that establishes some symmetry with what the FBI, the CIA, and the National Security Agency are allowed to do.

Mrs. ROUKEMA. Mr. Chairman, I yield back the balance of my time.

Mr. BIAGGI. Mr. Chairman, I rise in support of the amendment.

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Chairman, I am proud to join the gentlelady from New Jersey who has worked diligently with me in developing this language in of-

fering this amendment. Simply put, it recognizes the highly sensitive nature of the security industry and provides certain segments of this industry with the responsible and necessary use of the polygraph, while providing a number of carefully crafted and very important labor protections.

The Roukema-Biaggi amendment would allow a private employer to use the polygraph for prehiring and posthiring purposes, but only in those cases where employees would be responsible for high priority security functions, such as protecting public utilities, hazardous materials shipments, public transportation, currency, negotiable securities, precious commodities, or proprietary information.

Further, the amendment specifically states that the exemption provided for the security industry "shall not diminish an employer's obligation to comply with applicable State and local law, and any negotiated collective-bargaining agreement, which limit or prohibit the use of lie detector tests on such employees."

Finally, the amendment would guarantee that the "analysis of lie detector charts" are not used as the sole basis for discharging, dismissing, disciplining, or denying employment or promotion. The Department of Labor would be required to ensure that these provisions are effectively enforced and that the rights of the employee under these provisions are fully protected.

Mr. Chairman, as a 23-year veteran of law enforcement, I believe there are certain very specific situations where the polygraph can and should be used to help prevent crimes, and to detect criminals once a crime has been committed. This is one of those times. After all, the private security industry provides security for nuclear power facilities, the Federal Reserve, the strategic petroleum reserve, commercial and industrial firms, the U.S. Postal Service, the banking industry, hospitals and airports, to name just some of their responsibilities.

Certainly, a crime at any of these facilities could have devastating consequences. That is why they deserve the same special consideration being given by this bill to Government employers and private contractors dealing with intelligence or counterintelligence with the CIA, NSA, Department of Defense, and the FBI.

One final note, Mr. Chairman. History tells us that the polygraph test is neither overused nor abused by the private security services industry. The test, itself, costs hundreds of dollars to administer responsibly and is used on a very selective basis. For example, the industry's largest firm, which employs some 55,000 security personnel, has testified before our committee that in 1984 they gave only 700 preemployment polygraph tests, 150 tests related to missing funds and 50 random tests to those employees in highly sensitive areas. Further, they stated that in no

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case is a person denied employment or dismissed solely on the results of a polygraph examination.

Mr. Chairman, for anyone here interested in fighting crime, this is a good amendment. For anyone here interested in protecting the rights of labor, this is a good amendment. And, for anyone here interested in protecting the security interests of our Nation, this is a good amendment. I strongly urge its approval.

□ 1920

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mrs. ROUKE-MAL].

The amendment was agreed to:

AMENDMENT OFFERED BY MR. ECKART OF OHIO

Mr. ECKART of Ohio. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKART of Ohio: Page 8, after line 15, insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 7. DISCLOSURE TO EXAMINED EMPLOYEE OR PROSPECTIVE EMPLOYEE.

It shall be unlawful for any person who administers a lie detector test on behalf of any employer (other than an employer described in section 6(a), 6(b), or 6(c)) to fail to provide to the individual examined, within a reasonable time upon the request of that individual, a copy of written reports, recommendations, and charts which are prepared for, or made available to, such employer on the basis of the results of such test.

Mr. ECKART of Ohio (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Chairman, I am offering an amendment which would require that the employee or prospective employee who has been polygraphed under the exemptions provided in this bill, have the right to obtain copies of the test results as well as any written reports or recommendations based on the results of that exam.

I am offering this amendment in order to provide protection to the employees who may be required to submit to a polygraph exam. The scientific accuracy of these instruments have never been proven. As a result, I think it is vital that we provide every employee with the recourse to examine their test responses and determine whether they have been wrongfully accused of lying during the course of their polygraph examination.

I don't believe that my colleagues should have a problem with this amendment. My colleagues from Georgia and Florida, who have introduced legislation to require the licensing of

polygraph examiners, provided a similar protection in their bill.

The exemptions we have accepted today, though limited in scope, still provide a congressional approval of polygraphing in some cases. I do not believe that the adoption of these amendments signify congressional approval of the polygraph as an instrument for all employment testing, but rather a realization that there are some very specific cases, such as when our Nation's security is at stake, to allow the industry to use this tool as part of preemployment screening or an investigation.

Because we allow these limited exemptions, but still do not have full faith that the polygraph is properly registering the responses of the examinee, it is important that we provide examinees with the ability to obtain copies of materials which have been presented to their employer or prospective employer.

I urge my colleagues to adopt this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. ECKART].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BROOMFIELD

Mr. BROOMFIELD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BROOMFIELD: Page 8, after line 15, insert the following new subsection:

(e) PUBLIC UTILITIES EXEMPTION.—(1) Subject to paragraph (3), this Act shall not apply with respect to—

(A) an employee or prospective employee of a public utility engaged in the production, distribution, or transmission of electric energy; or

(B) an employee of a contractor with any such utility.

(2) The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement, which limit or prohibit the use of lie detector tests on such employees.

(3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion; or

(B) the test is administered to an employee or prospective employee who does not or would not have direct access to computers, generators, power lines, or other facilities or equipment related to the production, transmission, or distribution of electric energy.

Mr. BROOMFIELD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

(Mr. BROOMFIELD asked and was given permission to revise and extend his remarks.)

Mr. BROOMFIELD Mr. Chairman, the amendment I am offering would extend the national security exemption, already in this bill, by allowing our vital electric utilities to continue polygraph testing of certain employees, prospective employees, and employees of contractors who have or would have direct access to the computers, generators, power lines, or other facilities or equipment related to the production, transmission, or distribution of electric energy.

It is a narrowly drawn amendment that has been developed with the cooperation of Congressman WILLIAMS and his staff, as well as the various investor-owned utility associations. Their contributions to this amendment have been enormous and I wish to express my appreciation for their help.

We are all aware of the important role that electric power—whether it is generated from nuclear powerplants or from other sources—plays in the well-being of the American people and in our national security. Because of this important role it is critical that we maintain a reliable supply to the Nation.

However, all of us are aware of the ugly specter of terrorism in the world today, and our utility companies and this Nation, unfortunately, are not invulnerable to them. Our power supply depends upon interconnected networks covering vast geographic areas. An act of sabotage or terrorism in one major generating facility or switching station could cause power outages in several States. Further, many of our power companies also own and operate nuclear powerplants which must also be protected. These plants, according to the Nuclear Regulatory Commission, have already been the targets of more than a dozen deliberate acts of damage between 1980 and 1982.

Mr. Chairman, the electric utilities exercise great caution and care in selecting employees for these sensitive facilities, and the polygraph and similar methods serve as one of the tools they utilize in their checks.

I urge my colleagues to allow them to continue to use this tool to protect their operations and us by accepting my amendment.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the author of the bill, the gentleman from Montana.

Mr. WILLIAMS. I thank the gentleman from Michigan for yielding to me. Speaking as the author of the bill, as a sponsor of the bill, we are glad to accept this amendment because again it extends the exemption to power-generating resources. It is in the best interests of the security of this country that we protect large hydroelectric plants and nuclear powerplants from sabotage. That is what the gentleman is trying to accomplish. I note that the gentleman's amendment has the en-

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dorsement of the Edison Electric Institute, the Association of Investor-owned Electric Utilities, and the American Nuclear Energy Council. I am glad to join them and the gentleman in supporting his amendment.

EDISON ELECTRIC INSTITUTE,  
Washington, DC, March 11, 1986.

HON. PAT WILLIAMS,  
House of Representatives,  
Washington, DC.

DEAR PAT: The Polygraph Protection Act (H.R. 1524) is scheduled for House consideration on Wednesday, March 12. The purpose of the legislation is to limit the use of lie detector and similar tests by employers engaged in interstate commerce.

In a previous letter, I outlined the national security reasons why the electric utility industry must retain the option of using such tests. Congressman William S. Broomfield will offer an amendment to accomplish this purpose. The amendment exempting electric utilities is drafted narrowly, and applies only to employees of electric utilities engaged in the production, transmission, or distribution of electric power. The amendment has the support of Congressman Pat Williams, the primary sponsor of H.R. 1524.

With the inclusion of the amendment exempting electric utilities, the Edison Electric Institute supports H.R. 1524.

Sincerely,

THOMAS R. KUHN.

AMERICAN NUCLEAR ENERGY COUNCIL,  
Washington, DC, March 11, 1986.

HON. PAT WILLIAMS,  
House of Representatives,  
Washington, DC.

DEAR CONGRESSMAN WILLIAMS: On behalf of the nuclear utility members of the Council, I am writing to express support for the Broomfield amendment to H.R. 1524, The Polygraph Protection Act of 1985.

This amendment establishes a necessary exemption for electric utilities in order to protect public health and safety as well as national security.

I am pleased to learn that you have agreed to support the Broomfield amendment. As amended by the Broomfield amendment, the Council supports H.R. 1524.

Sincerely,

EDWARD M. DAVIS.

Mr. HILER. Mr. Chairman, will the gentleman yield?

Mr. BROOMFIELD. I yield to the gentleman from Indiana.

Mr. HILER. Mr. Chairman, is this yet another exemption from this bill, this polygraph which is such a dangerous, dastardly piece of equipment? Do we have yet another exemption?

Mr. BROOMFIELD. Mr. Chairman, the amendment speaks for itself.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. BROOMFIELD].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MCCOLLUM

Mr. McCOLLUM. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCOLLUM: Page 8, after line 15, insert the following new subsection:

(e) FINANCIAL INSTITUTION EXEMPTION.—  
(1) This Act shall not prohibit the use of a lie detector test on any officer or employee or prospective officer or prospective employ-

ee of any financial institution (as defined in section 5312(a)(2) of title 31, United States Code).

(2) This subsection shall not preempt any State or local law which prohibits or restricts the use of lie detector tests.

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Chairman, my amendment is very simple. It exempts all financial institutions from this act. It exempts banks, credit unions, it exempts savings and loans, it exempts securities dealers, it exempts anybody who is defined as a financial institution under our laws. We have already listed a number of exemptions to the Polygraph Act tonight.

We just a few moments ago passed an exemption for armored cars and drivers of armored cars that carry the cash around town for our banks. But we have not exempted the banks. It does not make any sense to me not to exempt the banks if we are going to exempt the armored-car drivers. The fact of the matter is we have exempted some drug people too, exempted the pharmaceutical companies, but we have not exempted the banks and the banks who are the employers of the tellers who are the ones in the front line to guard us against the money launderers who take the drug money from drug offenses.

It seems to me if we are going to have a logical bill in this case that if we have done the exemptions we just did for the pharmaceutical companies, for the armored-car drivers, for the security guards, we ought to exempt the banks and financial institutions.

Now why, beyond the fact that they fall into a similar category, do we exempt them? In the first place financial institutions operate with other people's money on the basis of trust. While most financial institutions have regulations covering actions that they may take in commerce with depositors' money there are no regulations that cover the conduct and integrity of prospective employees. For banks, over 80 percent of losses occur from internal theft. In 1983 financial losses to banks from internal theft amounted to over \$282 million. In 1984 that increased to over \$382 million, and that is while they were using polygraph tests to try to screen prospective employees. That is not just some of the banks' money we are talking about that is being lost here, these millions of dollars; that is money from somebody's checking account, that is somebody's life savings we are talking about. While many of those losses are insured, the costs of those thefts occur to all depositors and not all losses are insured.

Second, let us look at the fact that banks deal in large amounts of cash. That is why we are covering armored-car drivers in the first place. Cash is important, we ought to be concerned about that.

My colleagues, I think this is an important amendment. It is very impor-

tant because we are dealing with financial institutions, banks, people's money, we are dealing with whether or not we are going to be able to have a lie-detector test to give them one more tool to screen employees just as we have allowed the lie-detector test to be used for certain industries like pharmaceuticals, armored, cars, and security guards.

Money disappears in banks all the time. It disappears because people steal it, those who are working for the banks. That is where the problem is. That is why we need a check on them.

The fact of the matter is that not only do people steal cash from banks, they securities. Not only that, but the biggest single way you steal money today in the financial world is with a computer, just being an employee who has access to press a button at one of these institutions to transfer money from one account to another or overseas or wherever. And almost anybody who has access as an employee of a bank has access to these computers to play games with whether it is in the middle of the night or otherwise.

I submit to you that at the forefront of those institutions in this country in the private world that need the little protection that public policy allows, we have these financial institutions and we need an exemption for them for that reason.

But it is not just a question of stealing money or pushing a button or doing what else might be done in a normal financial transaction that bothers me. Right now we have millions of dollars, millions of dollars every year that are laundered through our financial institutions by drug dealers looking for a way to cover up the sources of their illegal transactions, looking for a way to come up with money that is clean and looking good. Who do they go to for that? Well, they go to a lot of people but not too unusual to have them go to a local teller in branch X, Y, or Z of bank X. And when they do that and they find a person who is susceptible to corruption, it is very easy to launder that money, in the millions of dollars that we are talking about, to avoid the Bank Secrecy Act, to avoid any law we have now on the books and it will make it that much more difficult when we come out with a bill on the floor this year or later to have a reasonable money laundering crime that can be enforced under those situations.

I submit to my colleagues that above all else tonight if we are going to pass this bill we need an exemption for financial institutions so they can screen the employees that have the trust of the money of this country. We need it desperately and I urge my colleagues that they adopt this amendment that I am offering tonight and we get on with the reasonableness which is in this bill from the standpoint of exemptions. This is another exemption

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as my colleague from Indiana said. It is a very important exemption, and I urge the passage of the McCollum amendment, please.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words, and I rise to oppose this amendment.

We have accepted most of the amendments, I guess all of the amendments that have been offered on this bill today. But we cannot accept an amendment to include all of the employees of a financial institution. Let me tell you what that does. The definition of "financial institution" reads this way: All private banks, all commercial banks, all thrift institutions, all credit-card systems, all insurance companies, all pawnbrokers, all loan companies, all telegraph companies, all travel agencies. That is the definition of "financial institutions."

Now if you are for strapping in all the little telegraph operators to the lie-detector gadget, you are for the McCollum amendment. If you are for strapping in all the tellers, you are for the McCollum amendment.

But if you are for that, you cannot possible be for this bill.

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. Yes, I would be glad to yield to my friend.

Mr. McCOLLUM. I thank the gentleman for yielding.

That is one of the fallacies of the bill. I do not think there is any question but that the gentleman has made a good point. But the only way when you start drawing these lines, and that is what that gentleman and others out here are doing today, you draw hard lines. You cannot draw easy lines. Financial institutions by definition do cover all those people. They are involved with passing the money of this country, they are the ones where the traveler's checks are, they are the ones where the bank drafts are, and they are the ones where the computer pushes millions of dollars around. You cannot have a narrow definition of a financial institution and you cannot narrow this thing down any more than that without providing a reasonable exemption for the polygraph.

Mr. WILLIAMS. Reclaiming my time, this is the business of this House to draw lines and with this bill we have drawn the line I think, but we should not allow all the pawnbrokers, telegraph operators, and the little gals sitting in the credit-card companies to undergo lie-detector tests.

□ 1935

Mr. TRAFICANT. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to my friend, the gentleman from Ohio.

Mr. TRAFICANT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I support the position of the sponsor of the bill and rise in opposition to this particular amendment.

I think we are getting a little bit carried away. I think the Congress is an institution that oversees more money than probably many of these groups we are talking about. Someone is going to come up with an amendment that perhaps maybe every Congressman should be tested whether or not they have any Communist ties. I think we are trying to eradicate the basic measure that is here. And I think we are going to come up with enough exemptions that there will be no intent to the original bill, that I think has the support of the Members of Congress.

Mr. Chairman, I would just like to say that we are starting to deviate. This is not a drug issue, a dollar issue, a crime issue, a Republican issue, a Democrat issue; it is a rights issue. We are starting to get to the point with accepting all these exemptions that we are starting to infringe upon those rights.

Mr. Chairman, I oppose the amendment.

Mr. WILLIAMS. Mr. Chairman, I want to tell my colleagues that we just accepted an amendment that says if you are a guard dealing with currency, negotiable securities, precious commodities, you can be made to undergo this lie detector examination. That is OK; this goes far too far.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to my friend, the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank my friend for yielding.

Mr. Chairman, I would just like to suggest to my friend from Florida that the litany of institutions that are covered under this definition is so extensive that, if I were the gentleman, I would advance my cause to associate myself with the remarks of the gentleman from Montana.

Mr. HILER. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

(Mr. HILER asked and was given permission to revise and extend his remarks.)

Mr. HILER. Mr. Chairman, it seems to make eminent sense to me that if we exempt the people who carry the money away from the financial institutions, should we not exempt the people who collect the money at the financial institutions.

Money comes in many forms today. It comes in plastic cards. It comes in wire transfers. It comes in travelers checks. It comes in greenbacks and it comes in hard currency.

This amendment makes eminent good sense. I think the bill is a bad bill, but if we are going to have the bill, if we are going to have many exemptions already, this exemption clearly is one that ought to be allowed. When we talk about the life savings and the cash flows of businesses and people and corporate America, we ought to be just as concerned about the safety of the institutions that take care of those functions as we are about

the institutions that carry the money away.

Mr. McCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. HILER. I yield to the gentleman from Florida.

Mr. McCOLLUM. Mr. Chairman, I would like to make a point on the gentleman's time, and I thank the gentleman for yielding.

The author of this legislation just said we covered all of this and we protect your money because we accepted an amendment to cover guards who guard the money. Guards who guard the buildings with pistols in their pockets or carry the money in trucks are not guarding much of our money today. They are protecting some time-honored 1920's bank robbery, protecting the public from that. But most of the money transactions today and the crime with money is done with a computer inside those institutions. The only way you can protect the money of the people of America today is with the McCollum amendment, protecting the rights of the employers in these financial institutions to examine in advance the employees they are going to hire to find out if they have a record of theft in the past, if they have a record that tends to mean they could be blackmailed into going along with a money laundering machine that somebody proposes to them, that tends to show that they would be a likely subject to go ahead and push that computer button and embezzle some money or transfer it somewhere.

Even with that, we cannot expect to protect it all, as the figures I gave earlier show. But with the polygraph, at least we will have some degree of protection with what we have today. Strip the polygraph away, the banks and the public have no protection, none, from people who may be hired who have the thought in mind of going out and stealing moneys while they work at the bank.

Mr. Chairman, I thank the gentleman for taking some time to make this point. The McCollum amendment is absolutely essential for the protection of the public.

Mr. SUNDQUIST. Mr. Chairman, will the gentleman yield?

Mr. HILER. I yield to the gentleman from Tennessee.

Mr. SUNDQUIST. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, it is interesting to me as I sat and observed the debate that we have moved—and incidentally, I support the gentleman's amendment. I think it makes sense, and I think the points the gentleman makes are accurate. But it is interesting that we are no longer debating the merits of polygraph. Now we are talking about who is important enough to have protection under polygraph, as we should.

As we are debating this, we have shifted now, as the debate should have shifted. The gentleman from Florida

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has pointed out how important this is that they be included.

On the other hand, we still have not answered the question of where do we draw the line. The author of the legislation said that we have a responsibility to have a fine line. I would submit that fine line is blurred, because of the debate of the opinion of the gentleman from Florida, the gentleman has pointed out how important it is. We are no longer talking about whether or not it is dependable, but who ought to have exemption from the proposed legislation.

The small business people, the mom and pop shops, are the ones who are going to suffer when we end up with this, because they are the only ones left who are going to be excluded.

Mr. Chairman, I would suggest we vote for this amendment and then close the entire piece of legislation.

Mr. HILER. Mr. Chairman, if the polygraph can work effectively for security guards, clearly it can work effectively for financial institutions.

Mr. Chairman, I support the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. McCOLLUM].

The question was taken, and on a division (demanded by Mr. WILLIAMS) there were—ayes 60, noes 47.

RECORDED VOTE

Mr. WILLIAMS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes, 194 noes 217, not voting 23, as follows:

[Roll No. 46]  
AYES—194

Anderson	Dowdy	Jones (OK)
Archer	Dreier	Jones (TN)
Army	Duncan	Kasich
Badham	Eckert (NY)	Kindness
Barnard	Edwards (OK)	Kolbe
Bartlett	Emerson	Kramer
Barton	English	Lagomarsino
Bateman	Erdreich	Leath (TX)
Bennett	Evans (IA)	Lent
Bereuter	Fawell	Lewis (CA)
Bilirakis	Fiedler	Lewis (FL)
Bliley	Fields	Lightfoot
Boulter	Fish	Livingston
Broomfield	Franklin	Lloyd
Brown (CO)	Frenzel	Lott
Burton (IN)	Frost	Lowery (CA)
Byron	Fuqua	Lujan
Callahan	Gallo	Lungren
Carney	Gekas	Mack
Carper	Gingrich	MacKay
Chandler	Goodling	Marlenee
Chapman	Gradison	Martin (NY)
Chappell	Green	Mazzoli
Chappie	Gregg	McCain
Cheney	Gunderson	McCandless
Coats	Hall (OH)	McCollum
Cobey	Hammerschmidt	McEwen
Coble	Hansen	McGrath
Coleman (MO)	Hartnett	McKernan
Combest	Heftel	McMillan
Craig	Hendon	Meyers
Crane	Henry	Michel
Daniel	Hiler	Miller (OH)
Dannemeyer	Hillis	Molinari
Darden	Holt	Monson
Daub	Hopkins	Montgomery
de la Garza	Huckaby	Moore
DeLay	Hughes	Moorhead
Derrick	Hunter	Morrison (WA)
DeWine	Hutto	Myers
Dickinson	Hyde	Nelson
DioGuardi	Ireland	Nichols

O'Brien	Schroeder	Stratton
Oxley	Schuette	Stump
Packard	Schulze	Sundquist
Panetta	Sensenbrenner	Sweeney
Parris	Shaw	Swindall
Pashayan	Shumway	Tallon
Petri	Shuster	Tauzin
Porter	Siljander	Thomas (CA)
Pursell	Sisisky	Thomas (GA)
Quillen	Skeen	Torricelli
Ray	Slaughter	Valentine
Regula	Smith (NE)	Vander Jagt
Ritter	Smith, Denny	Vucanovich
Roberts	(OR)	Walker
Roemer	Smith, Robert	Watkins
Rogers	(NH)	Whitehurst
Rose	Smith, Robert	Whitley
Roth	(OR)	Whittaker
Roukema	Snyder	Wolf
Rowland (CT)	Solomon	Wortley
Rowland (GA)	Spence	Young (AK)
Saxton	St Germain	Young (FL)
Schaefer	Stangeland	Zschau
Schneider	Stenholm	

NOES—217

Ackerman	Garcia	Oberstar
Akaka	Gaydos	Obey
Alexander	Gejdenson	Olin
Andrews	Gibbons	Ortiz
Annunzio	Gilman	Owens
Anthony	Glickman	Pease
Applegate	Gonzalez	Penny
Atkins	Gordon	Pepper
AuCoin	Gray (IL)	Perkins
Bates	Gray (PA)	Pickle
Bedell	Guarini	Price
Beilenson	Hamilton	Rahall
Bentley	Hawkins	Rangel
Berman	Hayes	Reid
Bevill	Hefner	Richardson
Biaggi	Hertel	Ridge
Boehlert	Horton	Rinaldo
Boggs	Howard	Robinson
Boland	Hoyer	Rodino
Boner (TN)	Hubbard	Roe
Bonior (MI)	Jacobs	Rostenkowski
Bonker	Jenkins	Roybal
Borski	Johnson	Russo
Bosco	Jones (NC)	Sabo
Boucher	Kanjorski	Savage
Boxer	Kaptur	Scheuer
Breaux	Kastenmeier	Schumer
Brooks	Kemp	Seiberling
Bruce	Kennelly	Sharp
Bryant	Kildee	Shelby
Burton (CA)	Klecza	Sikorski
Bustamante	Kolter	Skelton
Carr	Kostmayer	Slattery
Clay	Lantos	Smith (FL)
Clinger	Leach (IA)	Smith (IA)
Coelho	Lehman (CA)	Smith (NJ)
Coleman (TX)	Lehman (FL)	Snowe
Conte	Leland	Solarz
Conyers	Levin (MI)	Spratt
Cooper	Levine (CA)	Staggers
Coughlin	Lipinski	Stallings
Courter	Long	Stark
Coyne	Lowry (WA)	Stokes
Crockett	Luken	Strang
Daschle	Lundine	Studds
Davis	Manton	Swift
Dellums	Markey	Synar
Dicks	Martin (IL)	Tauke
Dingell	Martinez	Torres
Dixon	Matsui	Trafficant
Donnelly	Mavroules	Traxler
Dorgan (ND)	McCloskey	Udall
Downey	McDade	Vento
Durbin	McHugh	Visclosky
Dwyer	McKinney	Volkmer
Dymally	Mica	Walgren
Dyson	Mikulski	Waxman
Early	Miller (CA)	Weber
Eckart (OH)	Miller (WA)	Weiss
Edgar	Mineta	Wheat
Edwards (CA)	Mitchell	Whitten
Evans (IL)	Moakley	Williams
Fascell	Mollohan	Wilson
Fazio	Moody	Wirth
Feighan	Morrison (CT)	Wise
Flippo	Mrazek	Wolpe
Florio	Murphy	Wright
Foglietta	Murtha	Wyden
Foley	Natcher	Yates
Ford (MI)	Neal	Yatron
Ford (TN)	Nielson	Young (MO)
Fowler	Nowak	
Frank	Oakar	

NOT VOTING—23

Addabbo	Gephardt	Madigan
Aspin	Grothger	McCurdy
Barnes	Hall, Ralph	Rudd
Brown (CA)	Hatcher	Taylor
Broyhill	Jeffords	Towns
Campbell	LaFalce	Weaver
Collins	Latta	Wylie
Dornan (CA)	Loeffler	

□ 2000

The Clerk announced the following pairs:

On this vote:

Mr. Taylor for, with Mrs. Collins against. Mr. Loeffler for, with Mr. Weaver against. Mr. Campbell for, with Mr. Traxler against.

Mr. Rudd for, with Mr. Dymally against.

Messrs. HEFNER, GILMAN, and VOLKMER changed their votes from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Florida: Page 8, after line 15, insert the following new subsection:

(e) Children's day care center exemption—

(1) This Act shall not prohibit the use of a lie detector test on any employee or prospective employee of any children's day care center.

(2) This subsection shall not preempt any State or local law which prohibits or restricts the use of lie detector tests.

(f) Nursing home exemption—

(1) This Act shall not prohibit the use of a lie detector test on any prospective employee of any nursing home facility.

(2) This subsection shall not preempt any State or local law which prohibits or restricts the use of lie detector tests.

Mr. YOUNG of Florida. Mr. Chairman, of the amendments that I have prefiled, this is the only one that I intend to offer.

In view of the fact that the committee has accepted a number of amendments that exempted certain types of industry, I would ask the committee to very seriously consider accepting this amendment to exempt from the prohibition those industries dealing with children and day-care centers and America's senior citizens in nursing homes. These are people who cannot take care of themselves; people who need someone to be their champion.

Let the House of Representatives tonight take care of America's kids and America's senior citizens. I do not have to relate and I am not going to relate some of the terrible, terrible stories that we have read about in recent months about how children and senior Americans have been so terribly affected by some people in whose care they were charged.

This is a good amendment; it is certainly in keeping with the protection of people that the chairman of the committee talked about before. I hope the committee will accept it.



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Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman.

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Mr. WILLIAMS. Do I understand that the gentleman's amendment would allow or if the employer wished require the lie detecting of all teachers who worked with children in day-care centers, the janitor, the secretary, the person that answers the telephone?

Mr. YOUNG of Florida. My response is yes, anyone who would have access to those children or anyone that would have access to those senior citizens lying unprotected in a nursing home bed.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield further?

Mr. YOUNG of Florida. Yes, I certainly will.

Mr. WILLIAMS. Would all of the people who worked in a nursing home, that is, the driver of the van, the Meals on Wheels people, the janitor, the custodian that puts up the flag, would all those people have to undergo a lie detector test?

Mr. YOUNG of Florida. Well, I do not believe that our intent is to go that far, although we did accept an amendment that would exempt those same people if they carried money. Well, I think the protection of a child's life or a child's well-being is much more important than money.

Mr. WILLIAMS. Well, I am considering trying to accept the gentleman's amendment, but I want to know how direct the access with children and senior citizens is. If the gentleman is talking about giving a lie detector test to somebody who does not deal with these people, then I think that it is too broadly drawn.

Mr. YOUNG of Florida. No, sir; I would say to the gentleman that is not our intent. It is only our intent to allow polygraph exams for those who deal directly with children or directly with the elderly in nursing homes.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Florida. Yes, I am happy to yield.

Mr. MAZZOLI. Mr. Chairman, let me salute the gentleman on his amendment. When I have been watching the debate and listening to it, I was sorely tempted to offer an amendment along the lines of what the gentleman said. I think it would be highly irresponsible for this Chamber having exempted drivers of Brink's armored cars, having exempted a variety of other people, and not exempt from the application of this law the very people who deal with our children, vulnerable, weak, impressionable children, and the old people the very same way.

I think the gentleman has a very sensible, a very direct and I think an amendment which ought to be adopted.

Mr. YOUNG of Florida. Well, I certainly appreciate the gentleman's comments.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield again?

Mr. YOUNG of Florida. Yes, I yield.

Mr. WILLIAMS. Mr. Chairman, I need to understand the gentleman's intention. Is the gentleman referring to those employees in child care centers and nursing homes that have direct access to the children and the senior citizens?

Mr. YOUNG of Florida. That is my intent.

Mr. WILLIAMS. This gentleman will accept the gentleman's amendment.

Mr. YOUNG of Florida. Mr. Chairman, I thank the gentleman.

Mr. WEISS. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I know the hour is running late. I would have no objection if in fact the sponsors of this bill, the managers, would decide to take it up tomorrow at an earlier hour, to allow us to deal with it when we are refreshed. It seems to me that we are dealing with a very, very critical subject at this point.

We started with the premise that these polygraph tests are unreliable, unscientific, and endanger the security, well-being, lives and careers of people who are subjected to them. That has been the thrust of the argument on this issue all along.

The reason that this legislation came forward was to try to provide protection for American workers in the work place. Instead, what is beginning to happen by sort of a salami tactic is that we build in exemption after exemption after exemption. By the time we get through, we will have a piece of legislation which in essence authorizes, rather than restricts, the use of polygraph tests. It passes a favorable judgment on polygraphs.

The legislation would now say that it is OK to subject people who work in day-care centers to these tests. Why not for people who work in grammar schools? What is the magic cutoff? Is it kindergarten, first grade, or second grade?

I really do think, Mr. Chairman, that those who want this legislation very, very badly have lost sight of how this bill has been amended. It is no longer the bill it started out to be or was intended to be.

I think the better part of wisdom at this point, rather than to agree to amendments which ultimately turn this legislation inside out, is to recognize that the climate and the tenor in this body is such that you are accomplishing exactly the opposite of what you set out to do.

I hope that this amendment is defeated, and I would hope that the legislation would be withdrawn because it is in fact creating a worse situation than existed before this bill came on the floor. If adopted, it will be used as

the jurisdiction for the ever-increasing use of polygraph tests, and you can be assured that the Federal Government will not be far behind in insisting that all Federal employees, too, should be subject to these tests. The process which we have engaged in today is a classic example of good intentions having run amok.

Mr. ECKART of Ohio. Mr. Chairman, I move to strike the requisite number of words.

May I engage in a colloquy with the gentleman from Florida.

The concern expressed by my colleague, the gentleman from Montana, concerning direct access and who would be covered, if I may ask the gentleman if after the words that appear, "prospective employee," to insert the phrase in subsection (e)(1) "with direct access to children," and in subsection (f)(1) "with direct access to nursing home residents."

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman will yield, I ask unanimous consent that the gentleman's modification be included as part of the original amendment.

The CHAIRMAN. Will the gentleman please repeat the modification for the Clerk's sake.

Mr. ECKART of Ohio. Mr. Chairman, after the words "prospective employee" in subsection (e)(1) insert the phrase "with direct access to children," and in subsection (f)(1) after the words "prospective employee" insert the phrase "with direct access to nursing home residents."

The CHAIRMAN. Is there objection to the modification?

There was no objection.

The CHAIRMAN. The Clerk will report the modification to the amendment offered by the gentleman from Florida [Mr. Young].

The Clerk read as follows:

Modification to the amendment offered by Mr. Young of Florida: In subsection (e)(1) after "prospective employee" insert "with direct access to children" and in subsection (f)(1) after "prospective employee" insert "with direct access to nursing home residents".

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. Young of Florida, as modified: Page 8, after line 15, insert the following new subsection:

(e) Children's day care center exemption—  
 (1) This Act shall not prohibit the use of a lie detector test on any employee or prospective employee with direct access to children of any children's day care center.  
 (2) This subsection shall not preempt any State or local law which prohibits or restricts the use of lie detector tests.

(f) Nursing home exemption—  
 (1) This Act shall not prohibit the use of a lie detector test on any prospective employee with direct access to nursing home residents of any nursing home facility.

(2) This subsection shall not preempt any State or local law which prohibits or restricts the use of lie detector tests.

The CHAIRMAN. The question is on the amendment offered by the gentleman

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man from Florida [Mr. YOUNG] as modified.

The amendment, as modified, was agreed to.

AMENDMENT OFFERED BY MR. HUGHES

Mr. HUGHES. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUGHES: Page 8, after line 15, insert the following new subsection:

(e) EXEMPTION FOR LEGALIZED GAMING ESTABLISHMENTS.—(1) This Act shall not prohibit the administration of a lie detector test to any employee of a legalized gaming establishment by such an establishment to the extent that—

(A) such use is consistent with—

(i) applicable State and local law, and

(ii) any negotiated collective bargaining agreement.

that limits or prohibits the use of lie detector tests on such employees; and

(B) the test is administered only to employees with responsibility for, and in connection with, assuring compliance with subchapter II of chapter 53 of title 31, United States Code.

(2) For purposes of this subsection the term "legalized gaming establishment" means any establishment operated under a comprehensive State regulatory system regulating casino gaming or gambling.

Mr. HUGHES (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Chairman, my amendment provides an exemption for employees of casinos when those employees are involved in handling large amounts of cash or guaranteeing against money laundering through the casinos.

I might say it does not apply to New Jersey because New Jersey law would not permit polygraphs.

It allows polygraphs to be used to determine whether these employees are in fact involved in laundering large amounts of cash, but only where the use of polygraphs is consistent with State law and existing collective bargaining agreements.

It is very narrowly drawn so it only reaches the filing of those financial transactions that the Department of the Treasury uses to determine whether laundering is taking place.

Casinos present a unique problem in that we do not have the same structure as other financial institutions and if in fact we are serious about trying to focus in on money laundering, then you have got to make sure there are not people inside the casino that ahsan those filing requirements, those reports, that in fact the Department of the Treasury sees.

It is focused just to those reporting requirements. No other areas are covered by this particular amendment.

I would hope that this amendment for casinos and the reporting of financial transactions will be accepted by the committee I think it is needed. We are doing a lot of work in the area of money laundering and it seems to me that unless we close this loophole, it is not going to help us pass new money laundering legislation.

Mr. MARTINEZ. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield. Mr. MARTINEZ. Mr. Chairman, would the gentleman agree to a unanimous consent request to add to his amendment the following:

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

Mr. HUGHES. The gentleman asks if I will accept the language which indicates:

(3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

Mr. Chairman, I ask unanimous consent to accept that modification as part of the original amendment that I have offered. I understand the gentleman has offered this to each amendment and I would accept that modification.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. The Clerk will report the modification to the amendment offered by the gentleman from New Jersey [Mr. HUGHES].

The Clerk read as follows:

Modification to this amendment offered by Mr. HUGHES: (3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

Mr. MARTINEZ. Mr. Chairman, if the gentleman will yield, with the gentleman's acceptance of that modification, we have no objection to the amendment.

Mr. HUGHES. Mr. Chairman, I thank the gentleman.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to my colleague, the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, let me first salute my friend, the gentleman from New Jersey, my chairman on the Crime Subcommittee, for the work the gentleman has done to promote law enforcement in this country and particularly the bill on amending the Gun Act of 1968, which will be on this floor next week. I would commend

the gentleman's bill to the floor for serious consideration.

But let me ask the gentleman this question. I do not oppose the gentleman's amendment, but may I ask the question, we are stretching this string so far. In reading the newspapers, I understand that money is laundered through pizza cuts. It is laundered through laundries. It is laundered through arrangements for haulage of freight and cargo.

The question is, the whole bill may be a dissuasion for the very kind of information we need, which is on money laundering.

So I will not oppose the gentleman's amendment, obviously, but is there any kind of an amendment that we could offer that would allow us to go across the board in trying to find money laundering activities?

Mr. HUGHES. Well, that would be very difficult and the gentleman makes a very valid point. The problem, however, with casinos is that large sums of money are in fact laundered and there are so many different devices—

□ 2025

I said to my colleagues that casinos present a unique problem, and that is one of the reasons why the regulations have been changed to require certain financial transactions to be recorded, particularly where there are large sums of cash which go through the casinos. This amendment is just targeted to those areas. There is no sense in the Federal Government conducting all of these investigations, requiring all of these reports to be filed if, in fact, a dishonest employee can ash can these reports and otherwise tamper with these reports that come in when large transactions go down in the casino.

Mr. MAZZOLI. If I could ask my friend one final question. As one who is so much of an expert in this area, is there anything in this bill, if it were to pass, that would impede our efforts to control money laundering?

Mr. HUGHES. No; I think the law enforcement community is probably adequately protected in the legislation.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Chairman, I apologize, but we are having a great deal of problem understanding the gentleman's amendment because of the noise level. I want to be able to reconcile it with the action of this body turning down an exemption for financial institutions.

As I understand your amendment, it is narrowly drawn with respect to gambling institutions to those employees which may have an opportunity to launder money, and it is directed at organized crime.

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The CHAIRMAN. The time of the gentleman from New Jersey [Mr. HUGHES] has expired.

(On request of Mr. JEFFORDS and by unanimous consent, Mr. HUGHES was allowed to proceed for 1 additional minute.)

Mr. HUGHES. I yield to the gentleman from Vermont.

Mr. JEFFORDS. The gentleman's amendment is directed at those employees that might have an opportunity in concert with other illegal entities to be able to launder money through the gambling institutions; is that correct?

Mr. HUGHES. That is correct. In fact, it is very limited because the test can only be administered to employees with responsibility for and in connection with assuring compliance with subchapter II of chapter 53 of title 31, United States Code, which deals with those transactions that are reported to the Federal Government.

Mr. JEFFORDS. I have no objection to the amendment.

The CHAIRMAN. The Chair will request the Clerk to read the modification to the amendment offered by the gentleman from New Jersey [Mr. HUGHES].

The Clerk read as follows:

At the end of the amendment offered by the gentleman from New Jersey [Mr. HUGHES], insert:

"(3) The exemption provided under this subsection shall not apply if—

"(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion."

The CHAIRMAN. Is there objection to the modification offered by the gentleman from California [Mr. MARTINEZ]?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. HUGHES: Page 8, after line 15, insert the following new subsection:

(e) EXEMPTION FOR LEGALIZED GAMING ESTABLISHMENTS.—(1) This Act shall not prohibit the administration of a lie detector test to any employee of a legalized gaming establishment by such an establishment to the extent that—

(A) such use is consistent with—

(i) applicable State and local law, and  
(ii) any negotiated collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such employees; and

(B) the test is administered only to employees with responsibility for, and in connection with, assuring compliance with subchapter II of chapter 53 of title 31, United States Code.

(2) For purposes of this subsection the term "legalized gaming establishment" means any establishment operated under a comprehensive State regulatory system regulating casino gaming or gambling.

(3) The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the sole basis upon which an employee or prospective employee is discharged, dismissed, disciplined in any

manner, or denied employment or promotion.

Mr. HILER. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

Mr. Chairman, I find it absolutely incredulous that we are going to exempt casinos while we include financial institutions in this bill. I mean, think about that, 14,000 banks, 3,000 savings and loans, 20,000 credit unions who handle billions and billions and billions of dollars of depositors' money, day after day after day. We say that they are not exempt from the bill, but we exempt casinos.

My colleagues, I am going to give you an opportunity to cast a vote on this particular amendment as I will ask for a recorded vote.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. HILER. I yield to the gentleman from Maryland.

Mr. MITCHELL. You convince me. You have absolutely convinced me. We are opening this thing wider and wider. The last one on daycare, where a woman who cooks, does not have any access to the child, but one day might because somebody is out sick, might have to take that food up to the child has to get a polygraph test.

I think we have opened this up so wide that it is no longer a palatable bill for this Member, and I would find it exceedingly difficult to vote for it.

Mr. SUNDQUIST. Mr. Chairman, will the gentleman yield?

Mr. HILER. I yield to the gentleman from Tennessee.

Mr. SUNDQUIST. Mr. Chairman, I have a question of the gentleman from Indiana. Is what the gentleman saying that we are going to propose voting to exempt these gambling casinos, but not those members, those individuals who run a mom and pop shop, the small business person that belongs to the National Federation of Independent Businesses, these kinds of people are excluded from testing? Is that what the gentleman is saying?

Mr. HILER. That would be my interpretation, yes.

Mr. SUNDQUIST. I thank the gentleman.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. HILER. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, Members need to understand that we are not with this amendment excepting the polygraphing of everyone that works in a casino. We did not except it for banks and we are not excepting it for casinos. We are excepting it for a very narrow group of people, very select, very few people who are in a position in the casino to launder large amounts of money that threatens the safety, the financial safety of America. That is why we are excepting in the amendment.

Mr. HILER. Mr. Chairman, I find it fascinating that laundering of money

in casinos threatens the safety and soundness of the economic system when that same type of activity in a bank does not. I find that argument incredulous.

Mrs. VUCANOVICH. Mr. Chairman, I move to strike the requisite number of words and to speak in support of the amendment of the gentleman from New Jersey [Mr. HUGHES].

(Mrs. VUCANOVICH asked and was given permission to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Chairman, I only wish that the amendment of the gentleman from Florida [Mr. McCOLLUM] had been adopted because it would have covered casinos as a financial institution. This is an amendment which the gentleman from New Jersey [Mr. HUGHES], supported, as did I.

I urge all of my colleagues to support this amendment.

Mr. Chairman, gaming is Nevada's No. 1 industry yielding approximately \$148 million in annual revenues or 51 percent of the State's total revenues. Nevada's economy has the highest tourism dependency of any State in the Union, and more than 80 percent of Nevada's tourist spending is attributable to the presence of gaming. Nevada's gaming industry is strictly regulated by the State gaming commission making Nevada gaming the most closely scrutinized private industry in the country.

One of the tools the gaming industry uses to maintain these standards and strengthen licensing procedures is the polygraph. I believe this system of licensing and controls has worked well, eliminating abuses and providing employees adequate levels of protection against the misuse of the polygraph. The polygraph provides a strong deterrent to theft and other acts of willful misconduct which adversely affect the gaming industry.

For example, before polygraph tests were used, cash shortages at the Days Inn casino exceeded \$1 million per year. Since the use of the polygraph, those losses have been cut dramatically, to less than 1 percent of the casino's gross. In another example, a majority of employees failed the polygraph when asked if they were selling and distributing drugs to casino patrons. In this instance, the polygraph helped the casino eliminate this activity and provide better service to its patrons.

Polygraphs have provided a valuable service to Nevada gaming employers in controlling cash handling, drug trafficking, and other related matters in cage, casino and slot operations. If H.R. 1524 is passed, it will be extremely difficult for casinos to police themselves and will add an extra burden on law enforcement officials in this area.

I believe legalized gaming casinos should be able to continue to use the polygraph so that the criminal ele-

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ment can be further reduced in the State of Nevada.

I support this amendment, and I hope my colleagues will support it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. HUGHES], as modified.

The amendment, as modified, was rejected.

The CHAIRMAN. If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. FOLEY] having assumed the chair, Mr. GONZALEZ, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1524), to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, pursuant to House Resolution 337, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HILER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 236, noes 173, not voting 25, as follows:

[Roll No. 47]

AYES—236

Ackerman	Biaggi	Burton (CA)
Akaka	Boehlert	Bustamante
Alexander	Boggs	Byron
Andrews	Boland	Carper
Anunzio	Boner (TN)	Carr
Anthony	Bonior (MI)	Clay
Applegate	Bonker	Clinger
Atkins	Borski	Coelho
AuCoin	Bosco	Conte
Bedell	Boucher	Conyers
Beilenson	Boxer	Cooper
Bentley	Breaux	Coughlin
Bereuter	Brooks	Courter
Berman	Bruce	Coyne
Bevill	Bryant	Crockett

Daschle	Kleczka	Rinaldo
Davis	Kolter	Ritter
Dellums	Kostmayer	Robinson
Dickinson	LaPalce	Rodino
Dicks	Lantos	Roe
Dingell	Leach (IA)	Roemer
Dixon	Lehman (CA)	Rostenkowski
Donnelly	Lehman (FL)	Rowland (CT)
Dorgan (ND)	Leland	Roybal
Downey	Levin (MI)	Russo
Durbin	Levine (CA)	Sabo
Dwyer	Lipinski	Savage
Dymally	Long	Saxton
Dyson	Lowry (WA)	Scheuer
Early	Luken	Schneider
Eckart (OH)	Lundine	Schroeder
Edwards (CA)	Manton	Schumer
English	Markey	Seiberling
Erdreich	Martin (IL)	Sharp
Evans (IL)	Martinez	Shelby
Fascell	Matsui	Sikorski
Fazio	Mavroules	Skelton
Feighan	Mazzoli	Slattery
Flippo	McCloskey	Smith (FL)
Florio	McDade	Smith (IA)
Foglietta	McHugh	Smith (NJ)
Foley	McKinney	Snowe
Ford (MI)	Mica	Solarz
Ford (TN)	Mikulski	St Germain
Frank	Miller (CA)	Staggers
Frank	Miller (WA)	Stallings
Gallo	Mineta	Stangeland
Garcia	Moakley	Stark
Gaydos	Mollohan	Stokes
Gejdenson	Moody	Stratton
Gekas	Morrison (CT)	Studds
Gilman	Mrazek	Swift
Glickman	Gonzalez	Murphy
Gonzalez	Gordon	Murtha
Gordon	Gray (IL)	Natcher
Gray (IL)	Gray (PA)	Neal
Green	Green	Nichols
Gregg	Guarini	Nielson
Hamilton	Hamilton	Nowak
Hawkins	Hawkins	Oakar
Hayes	Heftel	Oberstar
Heftel	Hertel	Obey
Hertel	Horton	Olin
Horton	Howard	Owens
Howard	Hoyer	Panetta
Pease	Hubbard	Pashayan
Penny	Hughes	Pease
Pepper	Jacobs	Penny
Perkins	Jeffords	Pepper
Pickle	Johnson	Perkins
Price	Jones (OK)	Pickle
Quillen	Kanjorski	Price
Rahall	Kaptur	Quillen
Rangel	Kastenmeier	Rahall
Regula	Kemp	Rangel
Reid	Kennelly	Regula
Richardson	Kildee	Reid
Ridge		Richardson

NOES—173

Anderson	Daniel	Hartnett
Archer	Dannemeyer	Hefner
Army	Darden	Hendon
Badham	Daub	Henry
Barnard	de la Garza	Hiler
Bartlett	DeLay	Hillis
Barton	Derrick	Holt
Bateman	DeWine	Hopkins
Bates	DioGuardi	Huckaby
Bennett	Dowdy	Hunter
Bilirakis	Dreier	Hutto
Bliley	Duncan	Hyde
Boulter	Eckert (NY)	Ireland
Broomfield	Edwards (OK)	Ireland
Brown (CO)	Emerson	Jenkins
Broyhill	Evans (IA)	Jones (NC)
Burton (IN)	Fawell	Jones (TN)
Callahan	Fiedler	Kasich
Carney	Fields	Kolbe
Chandler	Fish	Kramer
Chapman	Fowler	Lagomarsino
Chappell	Franklin	Leath (TX)
Chapple	Frenzel	Lewis (CA)
Cheney	Fuqua	Lewis (FL)
Coats	Gibbons	Lightfoot
Cobey	Gingrich	Livingston
Coble	Goodling	Lloyd
Coleman (MO)	Gradison	Lott
Coleman (TX)	Gunderson	Lowery (CA)
Combest	Hall (OH)	Lujan
Craig	Hammerschmidt	Lungren
Crane	Hansen	Mack
		MacKay

Marlene	Porter	Snyder
Martin (NY)	Pursell	Solomon
McCain	Ray	Spence
McCandless	Roberts	Spratt
McCollum	Rogers	Stenholm
McEwea	Rose	Strang
McGrath	Roth	Stump
McKernan	Roukema	Sundquist
McMillan	Rowland (GA)	Sweeney
Meyers	Schaefer	Swindall
Michel	Schuette	Tallon
Miller (OH)	Schulze	Thomas (CA)
Mitchell	Sensenbrenner	Thomas (GA)
Molinari	Shaw	Valentine
Monson	Shumway	Vander Jagt
Montgomery	Shuster	Vucanovich
Moore	Sijander	Walker
Moorhead	Sisisky	Weiss
Morrison (WA)	Skeen	Whitehurst
Myers	Slaughter	Whitley
Nelson	Smith (NE)	Whittaker
O'Brien	Smith, Denny	Whitten
Ortiz	(OR)	Wolf
Oxley	Smith, Robert	Wortley
Packard	(NH)	Young (FL)
Parris	Smith, Robert	Zschau
Petri	(OR)	

NOT VOTING—25

Addabbo	Gephardt	McCurdy
Aspin	Grotberg	Rudd
Barnes	Hall, Ralph	Taylor
Brown (CA)	Hatcher	Towns
Campbell	Kindness	Weaver
Collins	Latta	Wright
Dornan (CA)	Lent	Wylie
Edgar	Loeffler	
Frost	Madigan	

□ 2045

The Clerk announced the following pairs:

On this vote:

Mrs. Collins for, with Mr. Taylor against.  
Mr. Weaver for, with Mr. Loeffler against.  
Mr. Barnes for, with Mr. Campbell against.

Mr. Brown of California for, with Mr. Rudd against.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1524, the bill just passed.

The SPEAKER pro tempore (Mr. BOUCHER). Is there objection to the request of the gentleman from California?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 1524, EMPLOYEE POLYGRAPH PROTECTION ACT OF 1985

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, the Clerk be authorized to make corrections in section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, H.R. 1524, the Employee Polygraph Protection Act of 1985.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

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There was no objection.

**REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 296, CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT, 1987, 1988, 1989**

Mrs. BURTON of California, from the Committee on Rules, submitted a privileged report (Rept. No. 99-491) on the resolution (H. Res. 397) providing for the consideration of the concurrent resolution (H. Con. Res. 296) setting forth the congressional budget for the United States Government for the fiscal years 1987, 1988, and 1989, which was referred to the House Calendar and ordered printed.

**REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF THE CONFERENCE REPORT AND AN AMENDMENT REPORTED FROM CONFERENCE IN DISAGREEMENT ON HOUSE JOINT RESOLUTION 534, URGENT SUPPLEMENTAL APPROPRIATIONS FOR DEPARTMENT OF AGRICULTURE, 1986**

Mrs. BURTON of California, from the Committee on Rules, submitted a privileged report (Rept. No. 99-492) on the resolution (H. Res. 398) waiving certain points of order against consideration of the conference report and an amendment reported from conference in disagreement on the joint resolution (H.J. Res. 534) making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1986, and for other purposes, which was referred to the House Calendar and ordered to be printed.

**CONFERENCE REPORT ON HOUSE JOINT RESOLUTION 534, URGENT SUPPLEMENTAL APPROPRIATION FOR THE DEPARTMENT OF AGRICULTURE, 1986**

Mr. WHITTEN submitted the following conference report and statement on the joint resolution (H.J. Res. 534), making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1986, and for other purposes:

**CONFERENCE REPORT (H. REPT. 99-493)**

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the resolution (H.J. Res. 534) "making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1986; and for other purposes," having met, after full and free conference have been unable to agree.

The committee of conference, report in disagreement numbered 1.

JAMIE L. WHITTEN,  
BOB TRAXLER,  
MATTHEW F. MCHUGH,  
WILLIAM H. NATCHER.

DANIEL K. AKAKA,  
WES WATKINS,  
RICHARD J. DURBIN,  
NEAL SMITH,  
VIRGINIA SMITH,  
JOHN T. MYERS,  
HAROLD ROGERS,  
JOE SKEEN,  
SILVIO O. CONTE,

*Managers on the Part of the House.*

THAD COCHRAN,  
JAMES A. MCCLURE,  
MARK ANDREWS,  
JAMES ABDNOR,  
BOB KASTEN,  
MACK MATTINGLY,  
ARLEN SPENCER,  
MARK O. HATFIELD,  
QUENTIN N. BURDICK,  
JOHN C. STENNIS,  
LAWTON CHILES,  
JIM SASSER,  
DALE BUMPERS,  
TOM HARKIN,

*Managers on the Part of the Senate.*

**JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H.J. Res. 534), making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1986, and for other purposes, report that the conferees have been unable to agree. This is a technical disagreement, necessitated by the fact that the substitute language agreed to by the conferees includes a provision which would fall outside the normal range between the House provision and deletion of the House provision as was proposed by the Senate.

It is the intention of the conferees that the managers on the part of the House will offer a motion in the House to recede and concur in the Senate amendment with an amendment consisting of the language agreed to in conference, and that upon the adoption of such amendment in the House, the managers on the part of the Senate will offer a motion in the Senate to concur therein.

The managers on the part of the House and the Senate submit the following joint statement in explanation of the action agreed upon by the managers:

**DEPARTMENT OF AGRICULTURE  
COMMODITY CREDIT CORPORATION**

Amendment No. 1. Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

*Provided further, That after fiscal year 1987, funds available to the Corporation may be used to carry out section 1241(a)(1) of the Food Security Act of 1985, only to such extent or in such amounts as provided in advance in appropriations Acts. The sign-up agreement should not reduce total production below levels needed to meet domestic needs, maintain the supply line, and provide for an adequate supply for export by either the Commodity Credit Corporation or private corporations or individuals at competitive prices; since by law the proceeds from sales become available for use by the Commodity Credit Corporation, such sales should reduce future appropriations: Provided further, That the conservation reserve program shall not replace or reduce any existing conservation program.*

*The level of funds previously appropriated for the insured operating loan program of*

*the Farmers Home Administration, as provided in the Appropriations Act for fiscal year 1986 for Agriculture, Rural Development, and Related Agencies (H.R. 3037), as enacted by Public Law 99-190 on December 19, 1985, shall be available until expended except as that level may be reduced by the terms of the sequester order implemented on March 1, 1986.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes House language which provided that after fiscal year 1986, funds available to the Commodity Credit Corporation to carry out the conservation reserve program and the Federal Crop Insurance Corporation program shall be available only to such extent or in such amounts as provided in advance in appropriations Acts.

The conference agreement includes language that the sign-up agreement for the conservation reserve program should not reduce total production below levels needed to meet domestic needs, maintain the supply line, and provide for an adequate supply for export by either the Commodity Credit Corporation or private corporations or individuals at competitive prices.

The conference agreement also provides that the conservation reserve program shall not replace or reduce any existing conservation program.

The Appropriations Act for fiscal year 1986 (H.R. 3037), as enacted by Public Law 99-190 on December 19, 1985, provided \$2.7 billion for direct operating loans. The conferees insist that the funds provided in the Appropriations Act remain available for fiscal year 1986, and remain available until expended, except as that level may be reduced by the terms of the sequester order implemented on March 1, 1986.

**COMMODITY SUPPLEMENTAL FOOD PROGRAM**

The conferees have been advised that the Department plans to use commodity supplemental food program funds to reimburse the Commodity Credit Corporation for donated surplus commodities. The conferees have agreed these funds shall not be used for reimbursement until this proposal has been reviewed by the appropriate committees of Congress.

JAMIE L. WHITTEN,  
BOB TRAXLER,  
MATTHEW F. MCHUGH,  
WILLIAM H. NATCHER,  
DANIEL K. AKAKA,  
WES WATKINS,  
RICHARD J. DURBIN,  
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MARK O. HATFIELD,  
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JIM SASSER,  
DALE BUMPERS,  
TOM HARKIN,

*Managers on the Part of the Senate.*